



DISASTER RECOVERY PROGRAM

PROJECT IMPLEMENTATION MANUAL



PROJECT IMPLEMENTATION MANUAL

TABLE OF CONTENTS

TABLE OF CONTENTS

ACRONYMS/INITIALISMS.....	1
DEFINITIONS.....	3
CHAPTER 1: INTRODUCTION.....	8
CHAPTER 2: ADMINISTRATION AND REPORTING.....	9
2.1 General Requirements (Housing and Non-Housing)	10
2.1.1 Establish a Local Administrative Structure	11
2.1.2 Local Administrative Services Contract	18
2.1.3 Administrative Threshold	20
2.1.4 Reporting and Recordkeeping.....	20
2.1.5 Establish a Recordkeeping System.....	20
2.2 Housing Specific Requirements	24
2.2.1 Weekly Progress Reports	24
2.2.2 Monthly Progress Reports	24
2.3 Non-Housing Specific Requirements	24
2.3.1 Quarterly Progress Reports	24
CHAPTER 3: FINANCIAL MANAGEMENT	26
3.1 General Requirements (Housing and Non-Housing)	27
3.1.1 Establish Internal Controls.....	27
3.1.2 Establish a Transaction Registry	28
3.1.3 Establish/Maintain Document Files and Records.....	28
3.1.4 Property Management Standards.....	29
3.1.5 Direct Deposit Authorization	29
3.1.6 Documentation Required Before the First Drawdown	29
3.1.7 Minimum Drawdown Requests and Disbursement	30
3.1.8 Construction Threshold.....	33
3.1.9 Denial of Payment	33
3.1.10 Local Funds and Allowable Costs.....	34
3.1.11 Make Accounting Adjustments.....	37
3.1.12 Tracking Program Income.....	37



PROJECT IMPLEMENTATION MANUAL

TABLE OF CONTENTS

3.1.13	Investigation of Fraud Allegations	37
3.1.14	Federal Cost Guidelines	39
3.2	Housing Specific Requirements	39
3.3	Non-Housing Specific Requirements	39
CHAPTER 4: PROCUREMENT PROCEDURES		40
4.1	General Requirements (Housing and Non-Housing)	42
4.1.1	Non-Competitive Negotiation Procurement.....	54
4.1.2	Recordkeeping Procedures.....	55
4.1.3	Professional Services	55
4.1.4	Construction and Material Purchases	56
4.1.5	Federal and State Laws Governing Procurement	56
4.1.6	State Laws and Regulations	56
4.1.7	Federal Laws and Regulations	58
4.2	Housing Specific Requirements	58
4.3	Non-Housing Specific Requirements	59
CHAPTER 5: ACQUISITION OF REAL PROPERTY		60
5.1	General Requirements (Housing and Non-Housing)	61
5.1.1	Types of Acquisition	62
5.1.2	The Acquisition Process	64
5.1.3	Appraisal Requirements.....	72
5.1.4	Recordkeeping and Reporting.....	73
5.1.5	Relocation	73
5.2	Housing Specific Requirements	75
5.3	Non-Housing Specific Requirements	76
CHAPTER 6: DAVIS-BACON ACT/LABOR STANDARDS.....		77
6.1	General Requirements (Housing and Non-Housing)	79
6.1.1	Objectives of Davis-Bacon	81
6.1.2	Procedures for Labor Standards Compliance	81
6.1.3	Restitution for Underpayment of Wages	87
6.1.4	Labor Disputes	88
6.1.5	Recordkeeping Requirements	88
6.2	Housing Specific Requirements	89



PROJECT IMPLEMENTATION MANUAL

TABLE OF CONTENTS

6.3	Non-Housing Specific Requirements	89
CHAPTER 7: FORCE ACCOUNT LABOR		90
7.1	General Requirements (Housing and Non-Housing)	92
7.1.1	Allowable Force Account Costs	92
7.1.2	Wages.....	92
7.1.3	Equipment Costs	93
7.1.4	Expendable Personal Property Costs	95
7.1.5	Force Account Recordkeeping.....	96
7.2	Housing Specific Requirements	97
7.3	Non-Housing Specific Requirements	97
CHAPTER 8: VENDOR SERVICES – GRANT ADMINISTRATION, ENVIRONMENTAL, AND ENGINEERING		98
CHAPTER 9: CONTRACT AMENDMENTS		99
9.1	General Amendment Requests.....	100
9.2	Performance Statement Changes	101
9.3	Budget Changes	101
9.3.1	Budget Amendment.....	102
9.4	Implementation Schedule	102
9.5	Change Orders	103
9.6	Housing Specific Requirements	104
9.7	Non-Housing Specific Requirements	104
CHAPTER 10: CIVIL RIGHTS REQUIREMENTS		105
10.1	General Requirements (Housing and Non-Housing)	106
10.1.1	Equal Opportunity and Non-Discrimination.....	106
10.1.2	Inclusion of Equal Employment Opportunity ("EEO") Provisions in Construction Contracts	107
10.1.3	Compliance with Section 3 Requirements	109
10.1.4	Participation by Small, Minority, and Women-Owned Businesses.....	114
10.1.5	Excessive Force Policy	114
10.1.6	Section 504 Requirements.....	114
10.1.7	Furthering Fair Housing	116



PROJECT IMPLEMENTATION MANUAL

TABLE OF CONTENTS

10.1.8	Monitoring and Recordkeeping	119
10.1.9	Applicable Federal Laws	120
10.1.10	Equal Opportunity.....	120
10.1.11	Handicapped Accessibility	121
10.1.12	Employment and Contracting	122
10.1.13	Excessive Force.....	122
10.1.14	Fair Housing	123
10.1.15	Displacement/Relocation	123
10.2	Housing Specific Requirements	124
10.3	Non-Housing Specific Requirements	124
CHAPTER 11:	CONTRACT CLOSE-OUT	125
11.1	Close-Out Report	126
11.1.1	Part I. General Reports	126
11.1.2	Part II. Performance Report.....	129
11.1.3	Part III. Beneficiary Report	130
11.1.4	Part IV. Final Financial Interest Report	131
11.2	Acceptance of Close-Out Report.....	131
11.3	Housing Specific Requirements	133
11.4	Non-Housing Specific Requirements	133
CHAPTER 12:	QUALITY ASSURANCE MONITORING.....	134
12.1	General Requirements (Housing and Non-Housing)	135
12.1.1	Desk Review	135
12.1.2	On-Site Review	136
12.1.3	Results of the Monitoring Review	137
12.2	Housing Specific Requirements	137
12.3	Non-Housing Specific Requirements	137
CHAPTER 13:	AUDIT REQUIREMENTS.....	138
13.1	General Requirements (Housing and Non-Housing)	139
13.1.1	Conducting the Audit and Preparing the Report	139
13.1.2	Primary Objectives of the Audit	140
13.1.3	Auditor Qualifications	140
13.1.4	Submissions	141



PROJECT IMPLEMENTATION MANUAL

TABLE OF CONTENTS

13.1.5	Audit Report Content Requirements	142
13.1.6	Audit Work Papers	144
13.1.7	Audit Tracking and Resolution	144
13.1.8	Liability	146
13.1.9	Audit Costs	147
13.1.10	Laws and Regulations	148
13.2	Housing Specific Requirements	148
13.3	Non-Housing Specific Requirements	149
CHAPTER 14:	RENTAL HOUSING	150
14.1	Program Objectives (Multifamily and Single Family Rental)	151
14.2	Program Purpose (Multifamily and Single Family Rental)	152
14.3	Multifamily Rental Program	152
14.3.1	Types and Amounts of Assistance	152
14.3.2	Property Eligibility	153
14.3.3	Participant Eligibility Requirements	154
14.3.4	Selection Criteria	154
14.3.5	Program Requirements.....	156
14.3.6	Underwriting	157
14.3.7	Environmental Review.....	157
14.3.8	Construction	158
14.3.9	Compliance Requirements	159
14.4	Single Family Rental Program.....	162
14.4.1	Types and Amounts of Assistance	162
14.4.2	Property Eligibility	163
14.4.3	Participant Eligibility Requirements	164
14.4.4	Selection Criteria	164
14.4.5	Program Requirements.....	165
14.4.6	Underwriting	165
14.4.7	Environmental Review.....	165
14.4.8	Construction	165



PROJECT IMPLEMENTATION MANUAL

TABLE OF CONTENTS

14.4.9 Compliance Requirements	166
14.4.10 Land Use Restriction	166
14.4.11 Forgivable Loan Default.....	167
14.4.12 Relocation	168
14.4.13 Landlord Requirements	168



PROJECT IMPLEMENTATION MANUAL

ACRONYMS/INITIALISMS

ACRONYMS/INITIALISMS

The Acronyms/Initialisms in this document are defined as follows:

ACF - Audit Certification Form

ADA - Americans with Disabilities Act

AIA - American Institute of Architects

AICPA - American Institute of Certified Public Accountants

AMFI - Area Median Family Income

ASTM - American Society for Testing and Materials

CAP - Corrective Action Plan

CARF - Comprehensive Annual Financial Report

CDBG - Community Development Block Grants

CFDA - Catalog of Federal Domestic Assistance

COCC - Certificate of Construction Completion

COG - Council of Government

CPA - Certified Public Accountant

CSR - Compliance Standards Review

CWHSSA - Contract Work Hours and Safety Standards Act

DBRA - Davis-Bacon and Related Acts

DOL - United States Department of Labor

EEO - Equal Employment Opportunity

EPLS - Excluded Party List System

ESP - Environmental Service Provider

FEMA - Federal Emergency Management Agency

FHEO - Fair Housing and Equal Opportunity Office

FLSA - Fair Labor Standards Act

FWCR - Final Wage Compliance Report

GAS - Government Auditing Standards

GASB - Governmental Accounting Standards Board

GLO-DR - Texas General Land Office-Disaster Recovery Program

HAP - Housing Assistance Payment

HOME - Home Investment Partnership



PROJECT IMPLEMENTATION MANUAL

ACRONYMS/INITIALISMS

HQS - Housing Quality Standards
HUB - Historically Underutilized Business
HUD - United States Department of Housing and Urban Development
IFB - Invitation for Bids
IRS - Internal Revenue Service
LMI - Low to Moderate Income
LSO - Labor Standards Officer
LURA - Land Use Restriction Agreement
MBE - Minority Business Enterprise
NOFA - Notice of Funding Availability
OMB - Federal Office of Management and Budget
OSHA - Occupational Safety and Health Administration
PCA - Property Condition Assessment
PCR - Project Completion Report
PHA - Public Housing Authority
QA/QC - Quality Assurance/Quality Control
RESPA - Real Estate Settlement Procedures Act
RFP - Request for Proposal
RFQ - Request for Qualifications
SAS - Single Audit Supplemental Report
SBA - Small Business Administration
SBE - Small Business Enterprise
SCADA - Supervisory Control and Data Acquisition
TDLR - Texas Department of Licensing and Regulation
TSP - Tenant Selection Policy
UGMS - Uniform Grant Management Standards
UPCS - Uniform Physical Conditions Standards
URA - Uniform Relocation Assistance
WBE - Women's Business Enterprise



PROJECT IMPLEMENTATION MANUAL

DEFINITIONS

DEFINITIONS

Acquisition – The utilization of CDBG funds to acquire real property. Acquisition-only is typically not considered a complete activity in the Program and must be combined with another eligible use (i.e. new construction).

Aggregate Cost – Total cost of the project including GLO-DR funds and all other funding sources.

Allowed Costs – Allowed costs are questioned costs that are allowed when the State accepts the costs as a proper charge to a grant award.

Alternative Entitlement Grants - Other Community Development Block Grant programs that provide communities with resources to address a wide range of unique community development needs.

Amendments – The amendment to the State's Action Plan submitted by the State to HUD on September 30, 2009 describing the proposed use of an additional \$1.7 billion made available under P.L. 110-329.

Analysis of Impediments - An assessment of how laws, government policies, real estate practices and local conditions affect the location, availability and accessibility of housing. The analysis of their impact on housing choice can highlight areas where corrective actions might broaden the housing options of persons protected by fair housing laws.

Coastal Barrier Resource Zones - A protected coastal area such as ocean-front land in an effort to protect the barrier system and prevent future damage.

Component Purchase – Purchases of the component parts of an item that in normal purchasing practices would be purchases in one purchase.

Contract Amendment - A modification to the terms of the contract agreed upon by one or all parties to the contract.

Davis-Bacon Labor Standards - The Davis-Bacon Labor Standards require all contractors and subcontractors performing work on federal construction contracts or federally assisted contracts in excess of \$2,000 to pay their laborers and mechanics not less than the prevailing wage rates and fringe benefits for corresponding classes of laborers and mechanics employed on similar projects in the area.

Demolition – Clearance and proper disposal of dilapidated buildings and improvements.



PROJECT IMPLEMENTATION MANUAL

DEFINITIONS

Disallowed Costs – Disallowed costs are charges to grants that the General Land Office Disaster Recovery Program determines to be unallowable in accordance with federal regulations, state program rules, and/or provisions of the contract with the General Land Office under the Disaster Recovery Program.

Duplication of Benefits - The Robert T. Stafford Disaster Assistance and Emergency Relief Act (Stafford Act) prohibits any person, business concern, or other entity from receiving financial assistance from CDBG Disaster Recovery funding with respect to any part of a loss resulting from a major disaster as to which he has already received financial assistance under any other program or from insurance or any other source. The state will allow for the most permissive current interpretation provided by HUD in determining Duplication of Benefits.

Fair Housing Act - Prohibits discrimination in the sale, rental and financing of dwellings based on race, color, religion, sex, national origin, disability, or on familial status (presence of child under age of 18, and pregnant women).

Grant Administrator – A grant administrator is responsible for assessing grant applications, disbursing grant monies, and overseeing their proper and legal use.

Grantee – A person or entity that receives CDBG funding.

Homebuyer Assistance Activity – The utilization of CDBG Disaster Recovery funding for up to 100% of the required down payment, reasonable closing costs, principal write-down assistance, subsidization of interest rates, and private mortgage insurance to facilitate the purchase of a new or existing home. The activity may be utilized in the relocation of a HOP participant or as assistance provided to a hurricane-impacted non-homeowner.

Housing - Housing activities may include single family home repair, reconstruction, new construction, demolition, acquisition, and code enforcement or rental activities.

Job – Project as defined by the engineering plans and specifications.

Individual Mitigation Measures (IMM) – Activities designed to mitigate and/or reduce risk beyond the pre-disaster condition of a housing unit when the activities are above and beyond federal, state, or local construction or code requirements. The State anticipates accessing additional funds for disaster activities under the Disaster Recovery Enhancement Fund that must be matched by funding provided for IMM. In accordance with HUD's guidance, repair and rehabilitation of housing units, and the payment of flood insurance are not IMM activities. Examples of IMM activities include elevation above the base flood elevation level, or the addition of storm shutters, hurricane proof windows, roof straps, etc. as long as those improvements are not required to comply with local code requirements and did not exist on the housing unit prior to the storm damage.

Low to Moderate Income (LMI) National Objective – Activities which benefit households whose total annual gross income does not exceed 80% of Area Median



PROJECT IMPLEMENTATION MANUAL

DEFINITIONS

Income, adjusted for family size. Income eligibility will be determined and verified in accordance with 24 CFR Part 5 requirements using procedures as stated in the Technical Guide for Determining Income and Allowances, 3rd Edition (HUD-1780-CPD). The most current income limits, published annually by HUD, shall be used by the subrecipient to verify the income eligibility of each household applying for assistance at the time assistance is provided. The LMI economic subcategories of very low, low and moderate for the CDBG Program correspond to the economic subcategories of extremely low, very low and low as identified in the Conciliation Agreement and are defined as follows:

- **Very low:** Household's annual income is up to 30% of the area median family income, as determined by HUD, adjusted for family size
- **Low:** Household's annual income is between 31% and 50% of the area median family income, as determined by HUD, adjusted for family size
- **Moderate:** Household's annual income is between 51% and 80% of the area median family income, as determined by HUD, adjusted for family size

Multifamily Rental – Eight or more rental units in the property. Davis-Bacon wage requirements apply to construction on CDBG-funded rental housing with eight or more rental units in a property.

New Construction – A replacement home that substantially exceeds the original footprint on the existing lot (if permitted) or the construction of a new home in a new location.

Non-Entitlement Grants - Federal funding to help states and units of local government in non-entitled areas meet their housing and community development needs. Community Development Block Grants carry out a wide range of community development activities directed toward neighborhood revitalization, economic development, and improved community facilities and services.

Non-Housing – Non-Housing activities include infrastructure repairs, equipment acquisition and installation, as well as economic development.

Program Design – The selection and development of programs and activities based on a Needs Assessment. The Program Design must include the type of housing activities that will be offered by the subrecipient, as well as how the Program will be marketed, how Fair Housing Objectives will be achieved, and how funding will be prioritized as determined through the Needs Assessment.

Questioned Costs – Questioned costs are costs challenged in an audit report, review of an audit report or monitoring report. Questioned costs often arise from audit or monitoring findings or concerns.

Recipient – Any entity that receives or administers any Hurricane Recovery Funds.



PROJECT IMPLEMENTATION MANUAL

DEFINITIONS

Reconstruction – Demolition and re-building of a stick-built or modular housing unit on the same lot in substantially the same footprint and manner. Activity also includes replacing an existing substandard manufactured housing unit (MHU) with a new or standard MHU or stick built/modular housing unit. The number of units on the lot may not increase and the total square footage of the original, principal residence structure to be reconstructed may not be substantially exceeded; however, the number of rooms in a unit may be increased or decreased.

Rehabilitation – Repair or the restoration of housing units in the hurricane-impacted areas to applicable construction codes and standards.

Rental Activity – Acquisition, rehabilitation, or construction of affordable rental housing resulting in structures where at least 51% of units are occupied by LMI persons. Income and rent restrictions apply to the rental units to be built or assisted with CDBG funds.

Separate Purchases – Purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.

Sequential Purchases – Purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase.

Single Family Rental – Seven or fewer rental units under common ownership. Units may be on contiguous or scattered lots. Davis-Bacon wage requirements apply to construction on CDBG-funded rental housing with eight or more rental units in the same property (not necessarily the same building) which are commonly-owned and operated as one rental, cooperative or condominium project.

Slum and Blight National Objective – Activities which help to eliminate slums and blighted conditions. Use of this National Objective is limited due to its inability to contribute towards the overall requirement that 55% of Ike and Dolly Round 2 funding benefit low to moderate-income beneficiaries. It must be justified in the application for funding and the restrictions of its use will be expressly detailed in the contract between GLO-DR and the subrecipient. Slum and Blight activities must meet the criteria of one of the three following categories:

- Prevent or eliminate slums and blight on an area basis;
- Prevent or eliminate slum and blight on a spot basis; or
- Be in an urban renewal area.

Subrecipient - Cities, Counties, Indian Tribes, local governmental agencies (including COGs), private non-profits (including faith-based organizations), or a for-profit entity authorized under 24 CFR 570.201(o). The definition of subrecipient does not include procured contractors providing supplies, equipment, construction, or services, and may be further restricted by program rules or other guidance including applications. In the case of this DR program, it refers to local entities administering housing dollars.



PROJECT IMPLEMENTATION MANUAL

DEFINITIONS

Uniform Relocation Assistance - The Uniform Act provides important protections and assistance for people affected by the acquisition, rehabilitation, or demolition of real property for Federal or federally funded projects. This law was enacted by Congress to ensure that people whose real property is acquired, or who move as a direct result of projects receiving Federal funds, are treated fairly and equitably and receive assistance in moving from the property they occupy.

Urgent Need National Objective – An urgent need that exists because existing conditions pose serious & immediate threat to health/welfare of community, the existing conditions are recent or recently became urgent (typically within 18 months), and the subrecipient cannot finance the activities on its own because other funding sources are not available. Use of this National Objective is not anticipated to be permitted with Ike and Dolly Round 2 funding.



CHAPTER 1

INTRODUCTION

INTRODUCTION

The hurricane seasons of 2008 severely impacted the Texas Gulf Coast.

The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. Law 110-329), enacted on September 30, 2008, appropriated \$6.5 billion through the CDBG program for "necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure, housing, and economic revitalization in areas affected by hurricanes, floods, and other natural disasters occurring during 2008 for which the President declared a major disaster."

The U. S. Department of Housing and Urban Development ("HUD") was designated by Congress as the administering agency.

This Project Implementation Manual provides guidance to recipients that have received grant funding based on the methods of distribution described in the Action Plans and the Amendments. The manual covers housing and non-housing funding administered by the Texas General Land Office ("GLO"). All forms referred to in this manual can be found under the forms section of the GLO Disaster Recovery website (<http://www.glo.texas.gov/GLO/disaster-recovery/index.html>).



CHAPTER 2

ADMINISTRATION AND REPORTING

ADMINISTRATION AND REPORTING

2.1	General Requirements (Housing and Non-Housing)	10
2.1.1	Establish a Local Administrative Structure	11
2.1.2	Local Administrative Services Contract	18
2.1.3	Administrative Threshold	20
2.1.4	Reporting and Recordkeeping	20
2.1.5	Establish a Recordkeeping System	20
2.2	Housing Specific Requirements	24
2.2.1	Weekly Progress Reports	24
2.2.2	Monthly Progress Reports	24
2.3	Non-Housing Specific Requirements	24
2.3.1	Quarterly Progress Reports	24



CHAPTER 2

ADMINISTRATION AND REPORTING

ADMINISTRATION AND REPORTING

This chapter highlights the steps in getting started and implementing your CDBG contract for successful project management. Prior to implementing a project, a recipient should put systems in place that will allow tracking and reporting on its activities as required by HUD.

2.1 General Requirements (Housing and Non-Housing)

The executed contract contains the dates of the contract's period. Any costs incurred prior to the start date can only be reimbursed if the pre-agreement allowance is followed. (No reimbursable contract costs other than audit costs can be incurred after the contract termination date.)

Kick-Off Meetings: The required meeting attendants are the applicant/owner, selected building contractor, and recipient staff. The purpose of the meeting is to discuss all of the following:

- Expectations;
- House plan selection;
- Accessibility options;
- Upgrade options;
- Schedule for completion of construction per contract documents;
- Discussion of Applicant move-out, including schedule; and
- Preferences of colors and materials, as available.

Pre-Agreement Allowance: Recipients may begin incurring CDBG eligible costs before the contract start date that will later be paid out of GLO Disaster Recovery ("DR") funds; provided all GLO-DR procurement requirements and special conditions that apply are satisfied.

The recipient may not incur costs or expend any contract funds for project construction prior to:

- Meeting the Environmental Review requirements of the GLO-DR contract; and
- Meeting all special condition requirements of the GLO-DR contract that are required to release funds (see Chapter 4, Procurement Procedures).

All other funds may only be spent following the release of funds designated in the Environmental Review procedures and clearance of all other special conditions.

The 90 Day Rule: Prior to executing the contract, the following need to be resolved to GLO-DR's satisfaction within 90 days after the contract award date:



CHAPTER 2

ADMINISTRATION AND REPORTING

- “Readiness to proceed” issues regarding the current award; and
- Outstanding issues on existing contracts regarding compliance with program requirements.

2.1.1 Establish a Local Administrative Structure

Record-keeping is necessary to meet all requirements of the project, including federal, state, local, and program requirements. Local charters, resolutions, ordinances, and policies specific to that jurisdiction must be met before the start of actual project activities.

The CDBG DR Program states that planning, management and administrative costs are capped. In addition, a defined percentage can be used for direct state administrative costs according to the Federal Register. Planning and management costs can be combined to make up the remaining percent.

The GLO-DR Program recommends that the recipient review the *Administrative Activities Checklist* (see below) item-by-item, and identify the activities that will be performed by recipient staff and those that will require outside assistance.

Administrative Activities Checklist

ACTIVITY	Recipient	Consultant	Eng/Arch	Other
A. Initial Administrative Procedures (Chapter 1 Administration and Reporting)				
Set up all files pertaining to GLO-DR contract activities.				
B. Environmental Review/Special Conditions Clearance Procedures¹				
Designate environmental review liaison and environmental certifying officer.				
Participate in environmental review record.				
Issue environmental impact statement (if applicable).				

¹ Recipients will have an Environmental Service Provider (ESP) assigned by GLO to prepare project's Environmental Review Records (ERR) and publish and submit Finding of No Significant Impact (FONSI) on their behalf. Recipients remains the Responsible Entity (RE) and maintains the ERR file.



CHAPTER 2

ADMINISTRATION AND REPORTING

ACTIVITY	Recipient	Consultant	Eng/Arch	Other
Request release of funds, send certification to GLO-DR.				
Clear project of GLO-DR contract special conditions.				
C. Financial Management (Chapter 2 Financial Management)				
Document local file/submit to GLO-DR the accounting system certification letter.				
Complete Direct Deposit Authorization Form.				
Establish GLO-DR grant non-interest bearing checking account.				
Submit to GLO-DR the Contractor's Depository/Authorized Signatory Designation form.				
Secure surety bonding for individuals having access to project assets, accounting records or checks related to the GLO-DR contract.				
Establish and maintain financial records consisting of registers, journals, and ledgers.				
Maintain (city/county) GLO-DR grant accounting operations.				
a. Execute drawdown requests.				
b. Review invoices received for payment and file back-up documentation.				
c. Draft checks.				
d. Pay invoices.				
e. Enter transactions in books.				



CHAPTER 2

ADMINISTRATION AND REPORTING

ACTIVITY	Recipient	Consultant	Eng/Arch	Other
f. Reconcile bank statements.				
g. Prepare financial reports.				
Establish procedures to handle the use of GLO-DR program income, if applicable.				
D. Reporting (Chapter 2, Administration and Reporting)				
Prepare and maintain all required project reports.				
a. Quarterly reports.				
b. Compliance reports (labor compliance, etc.).				
c. Financial Interest Reports.				
d. Funding Sources Disclosure Reports.				
E. Contract Amendments (Chapter 9, Contract Amendments)				
Monitor project to determine necessity of amendments to GLO-DR contract (i.e. change orders, high or low bids, design changes, etc.).				
Prepare and submit to GLO-DR documentation necessary for amending the DR contract.				
Conduct re-assessment of environmental clearance for any program amendments.				
F. Real Property Acquisition (Chapter 5, Acquisition of Real Property)				
Determine necessity for any acquisition activities for the GLO-DR project.				
Submit required reports concerning acquisition activities to GLO-DR.				



CHAPTER 2

ADMINISTRATION AND REPORTING

ACTIVITY	Recipient	Consultant	Eng/Arch	Other
Maintain documentation of ownership for recipient-owned property and or rights-of-way (R.O.W.s).				
Maintain a separate acquisition file for each parcel of real property acquired following URA requirements.				
Determine necessary method(s) for acquiring real property (easements/R.O.W.s).				
Prepare and distribute correspondence with property owners.				
Prepare descriptions of easements.				
Prepare property appraisals.				
Negotiate with property owner(s).				
File deeds with County Clerk.				
G. Force Account (Chapter 7, Force Account Labor)				
Determine if/what GLO DR contract activities will be carried out in whole or in part via force account labor.				
Determine necessity for hiring temporary employees to carry out GLO DR contract activities.				
Establish procedures to document expenditures associated with local administration of the project.				
Establish policy for any property/equipment purchased or leased and maintain GLO-DR Property Management Register.				
Prepare all preliminary and final design plans and specifications. (Non-Housing)				
Submit plans/specifications to appropriate agency(ies) and obtain clearance(s). (Non-Housing)				



CHAPTER 2

ADMINISTRATION AND REPORTING

ACTIVITY	Recipient	Consultant	Eng/Arch	Other
Maintain adequate documentation of personnel, equipment, and materials used and their costs.				
Document the leasing/rental/depreciation costs of all property/ equipment paid with DR funds.				
Assure and document compliance with all federal and state requirements related to equal employment opportunity.				
Document compliance with the minimum wage & overtime pay provisions of the Fair Labor Standards Act for local government employees.				
H. Project Construction Through the Contract (Chapter 6, Davis-Bacon Labor Standards)				
Prepare all preliminary and final design plans and specifications.				
Submit plans/specifications to appropriate agency(ies) and obtain clearance(s).				
Notify GLO-DR in writing of name, address, and phone number of appointed local labor standards compliance officer.				
Request wage rates from GLO-DR.				
Request and document price quotes for any items procured through small purchase procedures.				
Prepare bid packet/contract documents.				
Advertise for bids.				
Make Ten Day call to GLO-DR.				
Incorporate any and all wage rate modifications or supersede as via bid addendum (if applicable).				



CHAPTER 2

ADMINISTRATION AND REPORTING

ACTIVITY	Recipient	Consultant	Eng/Arch	Other
Conduct bid opening.				
Tabulate bids and check for completeness and accuracy.				
Maintain minutes of bid opening.				
Prepare and submit construction contractor eligibility form to GLO-DR.				
Review construction contract.				
Award construction contract.				
Send notices of contract award and pre-construction conference to construction company.				
Hold pre-construction conference and prepare copy of report/minutes.				
Submit any reports of additional classification and rates to GLO-DR.				
Submit Notice of Start of Construction to GLO-DR.				
Review weekly payrolls, including compliance enforcement.				
Conduct employee interviews.				
Process all change orders approved by the recipient and the project engineer and submit to GLO-DR prior to execution with construction contractor.				
Conduct interim/final inspections.				



CHAPTER 2

ADMINISTRATION AND REPORTING

ACTIVITY	Recipient	Consultant	Eng/Arch	Other
Prepare and submit Certificate of Construction Completion to GLO-DR.				
Prepare and submit Final Wage Compliance Report to GLO-DR.				
Make final payment.				
I. Fair Housing/Equal Employment Opportunity (Chapter 10, Civil Rights Requirements)				
Implement and document current and required activities to affirmatively further fair housing during the contract period.				
Implement and document compliance with all applicable equal employment opportunity provisions.				
a. Personnel policies and practices.				
b. Section 3 Reporting and Affirmative Action Plan.				
c. Complaint procedures.				
d. Section 504 requirements.				
Monitor construction contractor to ensure that all required equal opportunity regulations have been followed.				
a. Include all applicable equal opportunity provisions and certifications in bid packet.				
b. Section 3 Plan.				
Update and submit a FFAST Form.				
Document/report all final project beneficiaries by ethnicity and gender.				



CHAPTER 2

ADMINISTRATION AND REPORTING

ACTIVITY	Recipient	Consultant	Eng/Arch	Other
J. Audit/Close-out (Chapter 11, Contract Close-out and Chapter 13, Audit Requirements)				
Prepare and submit the Project Completion Report to GLO-DR.				
Respond to all monitoring findings by GLO-DR.				
Resolve any third-party claims to the project.				
Notify GLO-DR of intent to secure audit services.				
Provide the auditor with copies of GLO-DR audit guidelines.				
Conduct audit.				
Submit audit report to GLO-DR.				
Resolve any audit findings.				

2.1.2 Local Administrative Services Contract

The grant administrative services contract executed with GLO-DR on behalf of the recipient may include, but is not limited to, the following services:

Financial Duties:

- Submit financial startup forms;
- Assist recipient in establishing and maintaining a bank account;
- Work with recipient to develop a record-keeping system;
- Assist recipient with the procurement of audit services; and
- Coordinate the submission of required audit reports/response to findings.

Acquisition Duties:

- Submit acquisition reports and related documents;



CHAPTER 2

ADMINISTRATION AND REPORTING

- Establish acquisition files (if necessary); and
- Complete acquisition activities (if necessary).

General Administrative Duties:

- Work with recipient to establish and maintain filing system;
- Prepare and submit disclosure reports;
- Prepare and submit quarterly progress reports;
- Coordinate fair housing requirements;
- Coordinate Section 504 requirements;
- Coordinate with project engineers, environmental and project management contractors;
- Serve as monitoring liaison;
- Resolve monitoring findings;
- Resolve third party claims;
- Ensure program compliance; and
- Report suspected fraud.

Labor Duties:

- Submit Labor Standards Officer ("LSO") designation form;
- Serve as LSO;
- Request wage rates;
- Verify construction contractor eligibility and submit required form;
- Complete 10-day calls to verify current wage determinations;
- Attend preconstruction conference and provide necessary instruction to contractors;
- Submit the Notice of Start of Construction;
- Review construction contract(s) for compliance with labor laws and regulations;
- Conduct employee interviews to verify wages paid;
- Review contractor and subcontractor payrolls [wage/overtime/Equal Employment Opportunity ("EEO") compliance]; and
- Prepare final wage compliance report.



CHAPTER 2

ADMINISTRATION AND REPORTING

2.1.3 Administrative Threshold

The 6-Month Rule: Recipient will be evaluated after the first six months of the contract period for progress made to carry out project activities. Recipients that have not begun project activity, including Special Conditions contract requirements, may have contract funds de-obligated.

2.1.4 Reporting and Recordkeeping

The recipient is the Responsible Entity for all grant-related activities and must maintain all grant files locally; regardless of how the grant's administration services are carried out.

2.1.5 Establish a Record-Keeping System

Each recipient will follow the required *Filing System Guide* as applicable (see guide below), to meet GLO-DR monitoring requirements and establish the management of the grant responsibilities.

Records, applications, and support documents related to the grant shall be retained for the greater of three years from close-out of DR grant award, final audit acceptance, or the period required by other applicable laws and regulations as described in Sec. 570.487 and Sec. 570.488, including Conciliation Agreement.

A GLO-DR contract will be considered "out of compliance" for late or incomplete reports, unresolved programmatic issues, monitoring findings, and/or audit findings. The contract shall remain "out of compliance" until all issues have been satisfactorily resolved.

Filing System Guide

(NOTE: Grant files should be kept at city hall or county courthouse. Special Utility Districts should keep grant files at the main office.)

APPLICATION FILE

- Recipient's Application
- Public Hearing Information
- Surveys and Tabulation/Other Beneficiary Data
- Responses to GLO-DR Requests for Additional Information

CONTRACT FILE

- Contract Award Letter
- Executed Contract
- Amendment Requests/Resolution



CHAPTER 2

ADMINISTRATION AND REPORTING

- Executed Amendments
- Approved Performance Statement Modification Letters
- Approved Budget Modification Letters

FINANCIAL MANAGEMENT FILE

- Designated Depository/Authorized Signatory Form
- Audit Report demonstrating financial capacity
- Direct Deposit Authorization Form (*if applicable*)
- Copy of Transaction Register/Accounting Records for GLO-DR funds
- Documentation of Drawdown Transactions – Purchase Vouchers, Request Summaries, and all supporting documentation (*i.e. invoices, personnel/equipment/material records, etc.*).
- Source Documentation to support the receipt and disbursement of DR funds (*i.e. cancelled checks, deposit slips, monthly bank statements, bank account reconciliation records, etc.*).
- Register to document local commitment of funds if applicable

REPORTS

- Quarterly Report
- Financial Interest Reports
- Funding Source Disclosure Reports (*if applicable*)

REAL PROPERTY ACQUISITION

- Preliminary Acquisition Notice
- Invitation to Accompany Appraiser
- Appraisal Reports
- Statement of Just Compensation
- Offer to Purchase
- Contract of Sale (*deed, title, etc.*)
- Statement of Settlement Costs
- Warranty Deed/Right-of-Way Agreements
- Receipt for Purchase Price
- Public Solicitation Notice (*if voluntary*)
- Internal Valuation Reports (*if donations*)
- Waivers of Right to Just Compensation (*if donations*)



CHAPTER 2

ADMINISTRATION AND REPORTING

- Notice of Intent Not to Acquire (*if acquisition terminated*)
- Documentation of Appeals/Resolution (*if applicable*)
- Documentation for Exempt Acquisition Activities (*see Chapter 5 Acquisition of Real Property*)
- Evidence of Acquisition of All Needed Easements/R.O.W./Real Property
- Acquisition Reports

PUBLIC WORKS CONSTRUCTION AND MULTI-FAMILY (for EACH construction contract)

- Final architectural/engineering design plans and specifications (*and cost estimates*)
- TCEQ/Other Clearance Letters
- Appointment of Labor Standards Officer Resolution
- Wage Rate Determination Request/Wage Decision
- Price or rate quotations for small purchases
- Evidence of analysis of lease vs. purchase alternatives (*when applicable*)
- Bid/Contract Documents
- Bid Advertisements
- Bid Tabulation
- Evidence of bidders' receipt of addenda (*if applicable*)
- Contract Eligibility Verification Form
- Evidence of council/commissioner's court award of construction contracts
- Executed Construction Contract Documents
- Payment/Performance Bonding Documentation
- Notice/Minutes of Pre-construction Conference/Contract Award
- Start of Construction Notice (not required for CDBG Disaster Recovery Program housing rehabilitation contracts)
- Approved Change Orders
- Additional Classification Requests/Approval (*if applicable*)
- Weekly Payroll Records (*initialed/dated by LSO*)
- Monthly Employee Interviews
- Monitoring and Inspection (*Interim and Final*) Reports



CHAPTER 2

ADMINISTRATION AND REPORTING

- Certificate of Construction Completion
- Final Wage Compliance Report

FORCE ACCOUNT LABOR (if applicable)

- Force Account Labor Payroll Records (*if applicable*)
- Force Account Equipment Use Time Sheets/Rate Records
- Invoices/Justification of Equipment, Fuel and Repairs (*non FEMA*)
- Payroll Records for local staff administering the GLO-DR program
- Procurement Policy/Rationale for Method of Procurement
- Price or Rate Quotations for Small Purchases
- Evidence of Analysis of Lease or Purchase Alternatives (*if applicable*)
- Method of Procurement utilized for equipment (*lease/rental/purchase*)
- Method of Procurement utilized for materials

EQUAL EMPLOYMENT OPPORTUNITY/FAIR HOUSING

- Complaints (*if any*) and action taken to notify GLO-DR or HUD
- Site visit notes (*if any*)/Compliance Monitoring Reports (*if any*)
- Indication of location of Bid Specifications/Contract
- Equal Opportunity Provisions
- Contractor Certification of Equal Opportunity Compliance
- Contractor Certification of non-segregated facilities
- Contractor Certification of Section 3 Compliance
- Section 3 Plan or its equivalent
- Pre-construction Report
- Personnel Policies/Handbook
- Affirmative Action Plan
- Equal Employment Opportunity Plan
- Documentation of Fair Housing Activities
- Sample Advertisements for County Employment
- Section 503 Compliance
- Section 504 Self-Evaluation Review Form
- Section 504 Newspaper Publication (*if applicable*)
- Section 504 Grievance Procedures (*if applicable*)



CHAPTER 2

ADMINISTRATION AND REPORTING

- Section 504 Officer Appointment Resolution

CLOSE-OUT

- Project Completion Report (PCR)
- Map of actual construction locations
- Evidence of benefit (*if applicable*)
- GLO-DR Administratively Complete Letter

AUDIT

- Audit Report
- Response to Audit Report/Audit Compliance Letters

2.2 Housing Specific Requirements

2.2.1 Weekly Progress Reports

The housing Weekly Progress Reports must be received at GLO-DR no later than the second day of each week. Contract activity will be reported only for the week in which it occurred. The DR Weekly Activity Status Report consists of a single form accompanied by a list of homes completed.

2.2.2 Monthly Progress Reports

The housing Monthly Progress Reports must be received at GLO-DR by the 15th day of the month following the end of each month. Contract activity will be reported only in the month in which it occurred and until completion of the activity. The DR Progress Report consists of various sections. Recipients must supply all forms appropriate to their contract. Potential forms to be completed: *Monthly Activity Status Report*, *Monthly Construction* and/or *Non-Construction Status Report*, and *Monthly Financial Activity Status Report*.

2.3 Non-Housing Specific Requirements

2.3.1 Quarterly Progress Reports

The non-housing *Quarterly Progress Report* must be received at GLO-DR by the 15th day of the month following the end of each calendar quarter. Contract activity will be reported only in the quarter in which it occurred and until completion of the activity. The DR Progress Report consists of three sections to be completed: Recipient Implementation Schedule, Project Status by Contracts Awarded, and Minority Business Status [list the names of the minority-owned and women-owned company(s), also referred to as Historically Underutilized Businesses ("HUBS"), hired within the quarter]. Some sections pertain to the entire contract and some require project specific details. Subcontractor amounts paid will not be included in



CHAPTER 2

ADMINISTRATION AND REPORTING

the amounts paid for the prime (general) contractor. The interactive version of this form can be found at www.glo.state.tx.us.



CHAPTER 3

FINANCIAL MANAGEMENT

FINANCIAL MANAGEMENT

3.1	General Requirements (Housing and Non-Housing)	27
3.1.1	Establish Internal Controls	27
3.1.2	Establish a Transaction Registry	28
3.1.3	Establish/Maintain Document Files and Records	28
3.1.4	Property Management Standards	29
3.1.5	Direct Deposit Authorization	29
3.1.6	Documentation Required Before the First Drawdown	29
3.1.7	Minimum Drawdown Requests and Disbursement	30
3.1.8	Construction Threshold	33
3.1.9	Denial of Payment	33
3.1.10	Local Funds and Allowable Costs	34
3.1.11	Make Accounting Adjustments	37
3.1.12	Tracking Program Income	37
3.1.13	Investigation of Fraud Allegations	37
3.1.14	Federal Cost Guidelines	39
3.2	Housing Specific Requirements	39
3.3	Non-Housing Specific Requirements	39



FINANCIAL MANGEMENT

This chapter will cover financial requirements for CDBG contracts.

The financial requirements for recipients receiving GLO-DR grants are governed by regulations issued by the Federal Office of Management and Budget ("OMB"), State of Texas Uniform Grant Management Standards ("UGMS"), and HUD. Recipients are required to comply with the uniform administrative requirements as spelled out in the regulations.

3.1 General Requirements (Housing and Non-Housing)

Separate accounting records must be maintained for the GLO-DR project funds (i.e., separate from regular municipal/county funds or other entity funds). These records should, to the extent possible, be developed to be consistent with the recipient's general accounting system. Recipients must take the following steps to ensure an adequate local accounting system for the GLO-DR funds.

3.1.1 Establish Internal Controls

The recipient should establish internal controls that provide for responsible management of the GLO-DR funds. The system of internal controls should meet the following criteria:

- All conflict of interest provisions apply. No person who has carried out any functions part of the CDBG-DR Program, or who are able to participate in a decision-making process, or gain inside information on such activities, may obtain a financial interest or benefit from the activity.
- No person will have complete control over every phase of a significant transaction. For example, the person who authorizes payments to contractors should not draft and issue the payment check.
- Fiscal record-keeping for the GLO-DR contracts should be maintained separately from the general accounting operations.
- Monthly bank reconciliation and/or direct deposit monthly statements should be made by someone who is not responsible for handling cash or issuing checks.
- Persons issuing checks for grant expenses should not also handle payroll preparation/issuance of paychecks.

Note: Local project funds must be documented in a separate ledger, if applicable.

State law and the charters of home rule cities contain fidelity bond requirements for certain city and county officials. For their own protection, the GLO-DR program recommends that recipients additionally obtain a fidelity bond for each employee or



CHAPTER 3

FINANCIAL MANAGEMENT

official having access to project assets, accounting records, or checks. The bond (position or blanket type) should be in an amount at least equal to the total project assets that would be available to the project at any time.

3.1.2 Establish a Transaction Registry

The ledger should allow the recipient to track GLO-DR program receipts and disbursements, by line-item and total, over the contract period by assigning a standard code to each element in the accounts. If the recipient's present accounting system provides for coding of receipts and expenditures, recipients may need only to assign a specific code to GLO-DR activities. In addition, recipients should ensure that all Federal funds are properly rendered on accounting records on a continuous basis.

3.1.3 Establish/Maintain Document Files and Records

The GLO-DR program recommends that the recipient establish a separate, non-interest bearing, bank account for grant and local project funds.

If the recipient chooses to deposit grant funds into an interest bearing account, all interest income over \$100 per fiscal year that is earned on grant funds before disbursement must be returned to the GLO – this income is NOT considered "program income" and the GLO will return the funds to the U.S. Department of Treasury. See 24 CFR 85.21(i).

Proper source documentation allows re-creation of audit trails even in those instances where summary records and reports may not have been properly completed. Examples of source documentation include:

- Copies of Requests for Payment;
- Addendum record of direct deposit payments;
- Verification of deposits;
- Monthly bank statements with canceled checks;
- Check register/transaction ledger;
- Employee time and attendance sheets;
- Equipment time record sheets;
- Property inventory;
- Purchase orders, invoices, and contractor requests for payments; and
- All original source documents.



CHAPTER 3

FINANCIAL MANAGEMENT

3.1.4 Property Management Standards

The GLO-DR program may authorize the purchase of personal property for use on GLO-DR projects. Unless acquisition of property is an approved part of your GLO-DR contract, prior approval must be obtained from the GLO-DR for any real or personal property to be acquired using grant funds. Property management records must be maintained for all equipment used on GLO-DR projects whether these costs are reimbursed with GLO-DR funds or used to document all or part of the recipient's local project funds. Property purchased using GLO-DR funds are subject to additional federal requirements under 24 CFR 85.32. Please contact your DR Grant Manager for additional information.

3.1.5 Direct Deposit Authorization

The State Comptroller's Direct Deposit of Bills Program prefers that the GLO-DR program have payments deposited directly into the recipient's bank account.

The recipient is strongly encouraged to complete the *Direct Deposit Authorization Form* to receive payments from any state agency.

3.1.6 Documentation Required Before the First Drawdown

- Audit report for the most recent fiscal year (Contract Start Date – nine months – Fiscal Year End);
- *Depository/Authorized Signatories Designation Form*;
- A copy of the resolution authorizing the signatories; and
- Acquisition report for contracts with no acquisition activities (Non-Housing only).

GLO-DR must receive these items before any voucher payment requests can be processed.

The following documentation must be submitted for processing each drawdown request:

- *Request for Payment Form*;
- *State of Texas Purchase Voucher*; and
- Backup documentation.

Forms can be found on the GLO-DR website – submit one copy of each form with original signatures. Both forms are included in the same document and must be completed in the Adobe format; some information entered into the *Request for Payment* will be automatically transferred to the *Purchase Voucher*. (Any questions relating to the preparation of financial forms should be referred to the recipient's assigned DR Grant Manager.)



CHAPTER 3

FINANCIAL MANAGEMENT

Requests for payment must be accompanied by backup documentation that justifies payment for each budget line-item from which GLO-DR funds will be drawn. Requests for reimbursement will not be processed unless acceptable back-up supporting documentation is provided.

3.1.7 Minimum Drawdown Requests and Disbursement

Recipients may drawdown for eligible costs as often as is actually needed, with the provision that the minimum drawdown request is \$2,500. The exceptions to this rule are as follows:

- The drawdown exceeds 25% of a budgeted line item and the recipient is requesting funds only for that line item;
- The recipient is requesting funds for the final retainage of a construction contract;
- The recipient has received prior approval from the GLO-DR program; or
- The request is the final drawdown.

Recipients must disburse funds within a maximum of five calendar days from the time of receipt/deposit of funds to the time of actual local disbursement. Recipients should base their drawdowns on local cash needs to facilitate prompt disbursement and avoid monitoring findings.

Non-Housing Engineering Services:

Non-Entitlement and Alternative Entitlement Grants – Grant funded Engineering Services for Non-Entitlement and Alternative-Entitlement recipients may be provided by GLO-DR contracted engineers or by in-house force account services.

Contracted Engineers have been procured through State procurement process. Engineers are contracted by GLO-DR and services are secured and payments obligated through a Work Order process.



CHAPTER 3

FINANCIAL MANAGEMENT

Engineering Table A:

Engineering Non-Entitlement and Alternative-Entitlement Recipients

Engineering Thresholds:

Billing Milestone (not to exceed)	Scope to be Completed at this Milestone
30%	Preliminary Engineering
60%	Complete Plans & Specs
80%	Bid & Award; Start of Construction
90%	Construction oversight
100%	Certificate of Construction Completion

In-House Engineering Services may be payable to the recipient based upon the Self-Performing Thresholds and must be supported by certified payroll information and recipient time sheets.

Engineering Table B:

Billing Milestone- by project (not to exceed)	Scope to be Completed at this milestone
50%	Design work complete / Bid process complete / Bid awarded
95%	Start of Construction / Construction Oversight
100%	Certificate of construction completion

Non-Housing Project Delivery Services

Grant-funded Project Delivery Services for recipients may be provided by contracted grant administrators or by in-house force account services.

Contracted Grant Administrators for recipients have been procured through State Procurement process. Grant Administrators are contracted by the GLO-DR program and services are secured and payments obligated through a Work Order process.



CHAPTER 3

FINANCIAL MANAGEMENT

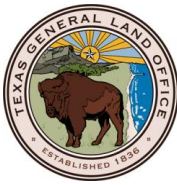
Project Delivery Table A

Pre-Funded Fees:	Scope to be completed at this milestone
\$1,500.00	Execution of recipient contract
Post Funded Fees (not to exceed)	(Balance of Project Delivery Fees)
10%	Submission of recipient contract start up documents
20%	Submission of Quarterly Report for 1st quarter of grant period
30%	Submission of Quarterly Report for 2nd quarter of grant period
40%	Submission of Quarterly Report for 3rd quarter of grant period
50%	Submission of Quarterly Report for 4th quarter of grant period
60%	Submission of Quarterly Report for 5th quarter of grant period
70%	Submission of Quarterly Report for 6th quarter of grant period
80%	Submission of Quarterly Report for 7th quarter of grant period
90%	Submission of Quarterly Report for 8th quarter of grant period
95%	Submission of close-out documents for grant
100%	Close-out of grant by GLO-DR

In-House Project Delivery Services for recipients may be paid to the recipient based upon the Self Performing & Entitlement Service Thresholds (Project Delivery Table B), and must be supported by certified payroll information and recipient time sheets.

Project Delivery Table B

Pre-Funded Fees:	Scope to be completed at this milestone
\$1,500.00	Execution of recipient contract



CHAPTER 3

FINANCIAL MANAGEMENT

Post Funded Fees (not to exceed)	(Balance of Project Delivery Fees)
50%	All required services prior to construction procurement
90%	Start of construction through submission of closeouts
95%	Submission of close-out documents for grant
100%	Close-out of grant by the GLO-DR program

3.1.8 Construction Threshold

Construction Threshold allows the final drawdown requested for any construction contract upon receipt of the *Certificate of Construction Completion* ("COCC") and *Final Wage Compliance Report* ("FWCR"). Until these documents are received, the GLO-DR program will retain 5% of the GLO-DR construction line-item funds or 5% of the construction contract, whichever is less.

3.1.9 Denial of Payment

Reasons for the GLO-DR program denying payment requests include, but are not limited to the following:

- Contract has expired and costs have not been reserved within 60 days after the contract end date;
- A program and/or budget amendment is required or pending;
- Funds have not been released as required by the Environmental Review;
- Recipient has not met one or more of the required special conditions of the contract;
- Incorrect signatory;
- Failure to submit Quarterly Reports, audit reports, or other required documentation; or
- Contract funds have been suspended for any reason related to this or other GLO-DR contract requirements.



3.1.10 Local Funds and Allowable Costs

Separate accounting records must be maintained for the local funds expenditures. Where the local resolution referenced the local funds as in-kind services, these must also be documented (see Chapter 7, Force Account Labor), and must include only actual costs. Documentation for all local funds expenditures must be available for review during the monitoring visit(s). Donated services may also constitute local funds, but must be pre-approved by the GLO-DR program.

Local funds can be considered as project funds only if:

- The funds are committed for activities proposed for funding with GLO-DR funds and will be used in the same target areas as the GLO-DR funds; or
- The funds will be used for activities that are directly related to supporting the activities proposed for GLO-DR funding.

The following types of funds and documentation are acceptable to the GLO-DR program:

Cash: Cash funds must be documented through actual expenditures by the recipient, other local entities, or other state/federal agencies.

Volunteer Labor / Donated Services: Volunteer labor and professional services that are donated to the project can be counted if prior approval is received from GLO-DR. Volunteer labor is labor provided by persons that are not employed by the recipient or working on the project activity in their capacity as an employee of the recipient or as an employee of a construction contractor on the project.

The value of volunteer labor funds must be based on the estimated GLO-DR contract-related construction hours to be worked by volunteer workers and the hourly wages that would be earned if the volunteer workers were actually paid. Donated services must be based on the estimated GLO-DR contract-related hours and the hourly wages or fees that would be earned if the services were not donated. The rates for the volunteer/donation work should be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved.

Force Account Labor, Project Delivery and Engineering (in-kind service): The value of force account labor must be based on the GLO-DR contract-related hours to be worked by force account workers/staff and the hourly wages to be paid and cannot be based on labor costs or estimated cost of service through the bid/contract method.

The recipient must provide *Personnel Cost Calculation Sheets* and *Construction Time Distribution Sheets* to document the value of the in-kind service.



CHAPTER 3

FINANCIAL MANAGEMENT

To document the value of these services, the recipient may provide:

- *Personnel Cost Calculation Sheets and Planning and Project Delivery Time Distribution Sheets*; and
- A schedule of the value of other GLO-DR-eligible administration/engineering costs (e.g., materials, supplies, bonding, postage, audits, plans/specifications, construction mapping, etc.).

Equipment Use (in-kind): The value of in-kind equipment use match for equipment owned by the recipient must be based on a use allowance or depreciation (both cannot be used for the same piece of equipment), and cannot be based on the estimated rental cost of such equipment if already owned by the recipient. Depreciation value may be used only if the equipment is not already fully depreciated.

The recipient must provide an *Equipment Cost Calculation Sheet* and *Construction Time Distribution Sheets* for all hours the equipment was in use on the project to document the value of the equipment usage.

Materials and Supplies: The value of materials/supplies to be provided by the recipient, and already owned by the recipient, must be based on the purchase price of the materials/supplies at the time of purchase and cannot be based on the current purchase price of such materials and supplies.

The recipient must provide an attachment/schedule which shows how the value of the match was determined. The schedule must include a list of the materials/supplies to be provided by the recipient, the number of units and the unit price acquisition cost of each material/supply.

Land: The value of land donations of public or private property must be based either: 1) on an independent appraisal report establishing the fair market value; or 2) on the purchase price of the property at the time of purchase.

Either way, the value claimed must be based on the amount of property actually needed for the GLO-DR project (e.g., the recipient cannot claim the value for a 200 acre tract of land if only one acre is needed for the GLO-DR project). The recipient must provide the appraisal report or deed of purchase establishing the value of the property needed for the GLO-DR project.

Match Funds Provided by other Funding Agencies

If matching funds for a GLO-DR project are provided by other federal or state sources, the recipient should document those matching funds according to the rules and regulations of the funding agency from which the funds are requested. The recipient should submit documentation of:

- The amount of funds actually received from each source;



CHAPTER 3

FINANCIAL MANAGEMENT

- The scope of the project funded through sources other than the GLO-DR program (to confirm that the funds are match to the GLO-DR-funded project); and
- Completion of that project.

Duplication of Benefits

Non-Housing

Duplication of benefit is strictly prohibited. Duplication of Benefits includes any payments or potential payments made to the applicant by identified parties that represent disaster assistance for the same loss that the DR Program is providing assistance which is not limited to Hurricane Dolly/Ike payments. Any portion of the duplication of benefits that has been determined to be funds spent by the applicant on "Allowable Activities" will reduce the amount considered to be a duplication of benefits.

Housing

Partial Action Plan Policy Statement:

To avoid duplication of benefits, the Estimate of Storm Damage Cost will be reduced by the following if such benefits were or will be paid to the household toward any of the activities included in the Estimate of Storm Damage Cost:

- Federal Emergency Management Agency ("FEMA") Grants;
- Homeowner insurance proceeds;
- National Flood Insurance Program proceeds; and
- Small Business Assistance ("SBA") loans identified by SBA as a duplication of benefits.

FEMA, SBA, and Insurance are considered to be a duplication of benefits and will be deducted from the construction starting values. The amount of duplication of benefits will be obtained from the third party from whom the benefit is derived. If after sufficient attempts it is considered unlikely to obtain and verify third party data in some cases, an affidavit may be used in its place as necessary.

All applicable claims (including insurance payments, unpaid claims, lawsuits, and settlements) paid to applicants not included in the original benefit determination calculation and/or after their closing appointment, must be subrogated to the Program to prevent a duplication of benefits.

NOTE: Documentation of duplication of benefits must be included in each applicant file even if no funds were received from FEMA, SBA, insurance, or any other source. A copy of this documentation must be provided to the GLO-DR program as part of the set-up request documentation.



CHAPTER 3

FINANCIAL MANAGEMENT

All projects funded in whole or in part through GLO-DR funds must comply with federal, state, and program requirements. Except as otherwise indicated, the procedures and requirements of the GLO-DR Project Implementation Manual apply to all work described in the contract Performance Statement, including work performed by or funded in part through other state or federal agencies.

If a construction contract includes both a GLO-DR project and a separate project (not included in the Performance Statement or claimed as matching funds) to be paid by the recipient or another funding source, the construction contract should clearly indicate the work and the costs associated with each project.

3.1.11 Make Accounting Adjustments

Recipient should ensure that they are drawing and expending GLO-DR funds from the correct budget line items. If a recipient draws funds from one activity line item and then expends those funds on a different activity, a Balance Adjustment Notice must be submitted as soon as the error becomes known.

After a Balance Adjustment Notice is submitted and approved, the recipient must adjust the *Request for Payment* form in the "Total Prior Request(s)" column and the "Balance" column on subsequent payment requests to reflect the changes.

3.1.12 Tracking Program Income

Communities will maintain records of the receipt and accrual of all program income in the same manner as required for all original contract funds. Specifically, records must identify the following:

- Sources of program income including project activity;
- Dates and amounts of program income deposits;
- Interest earned; and
- Dates and amounts of program income; return to GLO-DR.

A separate ledger account must be maintained for all program income and disbursements to the GLO-DR program.

3.1.13 Investigation of Fraud Allegations

Allegations of fraud may be reported to the GLO-DR program or to the HUD Office of the Inspector General. Allegations of fraud involving any GLO-DR funds will be investigated immediately after being brought to the attention of the GLO-DR program, through whatever source.

An investigation will be conducted if the allegations are made in connection with the services provided by a recipient using GLO-DR funds. The GLO-DR program will immediately:



CHAPTER 3

FINANCIAL MANAGEMENT

- Notify the recipient of the allegation; or
- Advise the recipient that it must conduct a preliminary investigation and submit a written report within seven working days from the date of notification. The report must include:
 - Nature of the allegation, dollar amount involved, whether a fidelity bond exists and its dollar coverage;
 - Who is involved [i.e., individual(s) accused of fraud], recipient's name, names of the recipient's council/commission, and the recipient's chief elected officer;
 - When the allegations were made;
 - Time period involved;
 - Where the incident occurred; and
 - How the alleged incident occurred.

Contact information to report FRAUD or WASTE in HUD-funded Programs and Operations:

HUD Inspector General Hotline (GFI)
451 Seventh Street, SW
Washington, D.C. 20410
1-800-347-3735
hotline@hudoig.gov

The GLO-DR compliance staff will review the report and make a determination as to whether further investigation is warranted.

If further investigation is not warranted, the file is closed or the recipient is directed to conclude the issue administratively.

If it is determined that further investigation is warranted, the GLO-DR program will conduct a full investigation of the allegations and may recommend withholding payments to the recipient, pending completion of the investigation. The scope of the investigation will be determined by the facts surrounding the incident.

Upon completion of the investigation the GLO-DR program will:

- Prepare an Incident Report that includes all findings and any initial corrective action taken to date by the GLO-DR program;
- Prepare a plan for corrective action, debt collection, and a plan for prosecution, if applicable;
- Cause a claim against the fidelity bond to be filed, if applicable;



CHAPTER 3

FINANCIAL MANAGEMENT

- Proceed with the resolution process on any costs which are questioned as a result of the investigation;
- Conduct a follow-up visit to insure that corrective action has been implemented; and
- Initiate debt collection procedures with the recipient, as applicable.

3.1.14 Federal Cost Guidelines

The financial requirements for local governments receiving GLO-DR grants are governed by regulations issued by the OMB and HUD.

Regulations	Government Entities	Nonprofit Organizations
OMB Circular A-87 Cost Principles for State, Local and Indian Tribal Governments	Elect*	NA
OMB Circular A-102 (implemented at 24 CFR Part 85) Uniform Administrative Requirements for Grants & Cooperative Agreements with State and Local Governments	Elect*	NA
OMB Circular A-110 (implemented at 24 CFR Part 84) Uniform Administrative Requirements for Grants & Cooperative Agreements with institutions of Higher Education, Hospitals and Other Nonprofit Organizations	NA	Required
OMB Circular A-122 and A-21 Cost Principles for Nonprofit Organizations or institutions of Higher Education	NA	Required
OMB Circular A-133 Audits of States, Local Governments, and Nonprofit Organizations	Required	Required

***Elect**—States may elect to follow these provisions or may elect to establish their own provisions. The GLO-DR program has elected to follow the provisions of the OMB Circulars.

3.2 Housing Specific Requirements

There are no other requirements that are specific to Housing only.

3.3 Non-Housing Specific Requirements

There are no other requirements that are specific to Non-Housing only.



CHAPTER 4

Procurement Procedures

PROCUREMENT PROCEDURES

4.1	General Requirements (Housing and Non-Housing)	42
4.1.1	Non-Competitive Negotiation Procurement.....	54
4.1.2	Recordkeeping Procedures.....	55
4.1.3	Professional Services	55
4.1.4	Construction and Material Purchases	56
4.1.5	Federal and State Laws Governing Procurement	56
4.1.6	State Laws and Regulations	56
4.1.7	Federal Laws and Regulations	58
4.2	Housing Specific Requirements	58
4.3	Non-Housing Specific Requirements	59



CHAPTER 4

PROCUREMENT PROCEDURES

PROCUREMENT PROCEDURES

Procurement is the process through which an entity obtains goods and services from vendors. The federal government has established a set of procurement rules that apply to GLO-DR program funded projects. These rules are in place to ensure that federal dollars are spent fairly and encourage open competition for the best level of service and price. In addition, the State of Texas has enacted a set of regulations that also apply to GLO-DR contracts. The procurement procedures shall comply with both sets of regulations.

NOTE: If there is a conflict between federal and state laws regarding procurement, the more stringent law will apply.

Procurement should not be completed until an environmental fund release is in place for the project being proposed.

A good procurement system should facilitate the recipients' ability to:

- Identify and specify standards for the goods or services the recipient wants to obtain - invitations for bids or requests for proposals must be clearly written and must describe the technical requirements of the equipment or services;
- Obtain an independent cost estimate for the goods or services;
- Seek competitive offers to obtain the best possible quality at the best possible price;
- Promote the maximum use of small, minority-owned and female-owned businesses. Possible actions include:
 - Contacting Minority Business Entities ("MBE") and encouraging them to provide a proposal, quote, or bid;
 - Dividing total requirements into smaller tasks or quantities that small businesses can bid on, if economically feasible;
 - Requiring prime contractors to take the same affirmative steps listed above in the procurement of their subcontractors; and
 - Using other suggestions found in Chapter 10, Civil Rights Requirements.
- Have a quality assurance system that helps ensure a fair price for the goods and/or services;
- Review all procurements to avoid duplicative purchases and to ensure costs are "reasonable"; and



CHAPTER 4

PROCUREMENT PROCEDURES

- Use a written agreement that clearly states the responsibilities of each party; the method of contracting (fixed price, purchase orders, etc.) should be appropriate. Cost plus percentage of cost contracts are specifically prohibited if GLO-DR funds are involved.

Recipients must provide documentation to show that the selection process was carried out in an open, fair, uniform and thorough manner and to ensure that all procurement requirements were met. Failure to maintain documentation may result in disallowed costs. These records must include, but are not limited to the following information:

- Rationale for the method of procurement;
- Solicitation/response;
- Evaluation and selection criteria;
- Contractor selection or rejection; and
- The basis for the cost or price.

4.1 General Requirements (Housing and Non-Housing)

The Competitive Negotiation procurement method applies to all professional service contracts paid in whole or in part with GLO-DR funds.

Competitive negotiation procurement is used when factors other than cost are an important part of selecting the vendor. Once proposals are received and rated/ranked, the recipient is free to negotiate with one or more respondents to arrive at the most advantageous terms and price. This negotiation is the main difference between this method and the Competitive Sealed Bids Method.

Competitive Negotiation is required for purchasing professional services on GLO-DR projects.

Common professional services used for GLO-DR projects include:

• Land Surveying	• Architectural Work	• Appraisal Services
• Accounting	• Legal Counsel	• Auditing

Regardless of the source of funds that will pay for the contracts, all recipients must adhere to the State of Texas' Professional Services Procurement Act (Texas Government Code, Chapter 2254). According to this Act, professional services contracts must be selected and awarded based on demonstrated competence and qualifications for the type of professional services to be performed.

Recipients are encouraged to procure professional services under the Pre-Agreement Allowance described in Chapter 2, Administration and Reporting, as applicable, in order to expedite the project.



CHAPTER 4

PROCUREMENT PROCEDURES

Local costs for professional services incurred before the completion of the procurement process may not be reimbursable. This varies by activity and is generally prohibited with limited exceptions and must be pre-approved by GLO-DR staff.

Step-by-Step Selection Procedures

STEP 1: Establish Local Selection Review Committee. The Selection Review Committee establishes the criteria or evaluation factors to be used for selection and rating of competing respondents.

Conflict of interest regulations can be found in the Texas Government Code Chapter 573, Texas Local Government Code Chapter 171, and 24 CFR 570.489(h).

STEP 2: Determine the Scope of Services. The scope of work should itemize tasks needed with timeframes and achievable goals as appropriate, and is the basis for the Request for Qualifications ("RFQ") and professional services contract.

STEP 3: Establish Written Selection Criteria. The committee's written selection criteria should include a clear and accurate description of the technical requirements of the services to be procured. The GLO-DR program requires the recipient use a scoring method for reviewing professional service proposals.

The local governing body has final authority to approve all professional services contracts.

STEP 4: Develop the Solicitation.

The recommendation must meet the reasonable, responsive, and responsible tests according to federal procurement procedures:

- **Reasonable:** Refers to the most suitable, fit and appropriate respondent to accomplish the job in question.
- **Responsible:** Refers to the respondent that is able to fully perform the requirements of the contract and has the integrity and reliability that will assure good faith performance.
- **Responsive:** Refers to the respondent that has submitted a bid/proposal that fully conforms to the information requested in the RFQ.

Pursuant to Conflict of Interest regulations, an engineer would be prohibited from also serving as the recipient's management consultant on the GLO-DR funded project.

For all engineering services, and for management services where the proposed cost is not feasible, contract negotiations with the selected respondent occur during the last step of the selection process. The recipient may negotiate either a fixed-price or not to exceed cost-reimbursable type contract. Negotiations should be focused



CHAPTER 4

PROCUREMENT PROCEDURES

on the specific scope of services to be provided, terms and conditions of the contract, and the amount of compensation for each activity. When appropriate, specific time frames for accomplishment of activities should be negotiated as terms of the contract to ensure prompt completion of the project.

Negotiation of price for engineering/architectural services must take place after selection is completed. Proposed cost may not be a selection criteria or consideration.

Procurement Checklist:

- Establish a committee for rating the management proposals.
- Create a Rating Sheet (for scoring purposes).
- Prepare the cover letter for the RFQ.
- Prepare the RFQ package to include:
 - Scope of Work;
 - Deadline for Submission;
 - Statement of Qualifications;
 - Evaluation Criteria; and
 - Proposed Cost of Services (excluding Professional Services).
- Advertise in Newspaper and Distribute RFQ – send to three firms.
- Committee meets to rate proposals.
- Select a management consulting firm.
- Award a Contract.

The procurement process should be well documented. For each different type of service, a separate file must be created for documentation records, which should include the following:

- Copies of all Invitation for Bids ("IFB") and RFQs published and mailed;
- Copies of bidding and/or proposal packages;
- Bid and proposal responses;
- Records of bid and proposal evaluation evidencing method of selection used; and
- Other procurement correspondence.

Construction and Materials Contracts

Construction services and materials contracts paid in whole or in part with GLO-DR funds must be procured using either the Small Purchase procurement method or the Sealed Bids procurement method.



CHAPTER 4

PROCUREMENT PROCEDURES

Small Purchase Procurement: The Small Purchase procurement method uses relatively simple and informal procurement methods to secure equipment, non-professional services, supplies or other property that cost, in the aggregate, less than \$50,000 in accordance with state law.

Key concepts for Small Purchase procurement include:

- **Aggregate cost:** Total cost of the project including GLO-DR funds and all other funding sources;
- **Job:** A project as defined by the engineering plans and specifications;
- **Separate purchases:** Purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase;
- **Sequential purchases:** Purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase; and
- **Component purchases:** Purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase.

The Local Government Code, Sec. 262.023(c) and Sec. 252.062(a) specifically prohibit the use of the small purchase procurement method to make separate, sequential, or component purchases of items or services, with the intent of avoiding the competitive bidding and competitive proposal requirements. For example:

- A water line job should be one purchase, rather than separate purchases of pipe, fire hydrants, valves, and fittings.
- A water storage tank should be bid as one purchase, rather than separate purchases of site preparation, foundation, piping, valves, welding, etc.

Prior to beginning small purchase procedures, the recipient should get an estimate of the cost of the construction from the engineer.

Step-by-Step Small Purchase Procedures:

STEP 1: Comply with Davis-Bacon Act Requirements. The recipient must obtain prevailing wage rates for the local area as required by the Davis-Bacon and Related Acts, and incorporate those wage rates into the procurement for construction. The wage decision must be faxed or mailed to the construction company. See Chapter 6, Davis-Bacon Labor Standards, for specific information on the requirements of the Davis-Bacon Act.

Wage Rates are not required for construction contracts less than \$2,000.

STEP 2: Contact Three Vendors for Quotes or Estimates. The recipient must contact at least three firms by phone, in person, or in writing, to obtain cost estimates for the goods or services. The responses (including responses that indicate no interest or quotes provided) must be recorded locally.



CHAPTER 4

PROCUREMENT PROCEDURES

STEP 3: Promote Participation of MBEs. The recipient should document and actively take steps to encourage proposals from small, minority, and female-owned businesses.

STEP 4: Clear the Contractor. The recipient must verify the construction contractor's eligibility through the Excluded Party List System ("EPLS"). See Chapter 6, Davis-Bacon Labor Standards, for details.

NOTE: The contract may be awarded before the contractor is cleared, but may NOT be executed without obtaining EPLS clearance.

STEP 5: Award the Contract. The recipient should award the contract to the lowest appropriate bidder. The GLO-DR program recommends the recipient's attorney review the construction contract prior to contract award, and certify that it meets all program, state, and federal requirements.

STEP 6: Execute the Contract. The recipient must submit the *Financial Interest Report* to the GLO-DR program within 30 days of executing the contract, and submit the *Labor Standards Record* prior to the first Request for Payment for construction work.

Formal Bidding Procurement

Procurements of equipment, non-professional services, and construction contracts whose total cost is more than \$50,000 must formally advertise for sealed bids in a newspaper of general circulation and hold a public bid opening.

Sealed bids are publicly solicited and a firm, fixed-price contract (lump sum or unit price) is awarded to the responsible respondent whose bid, conforming to all the material terms/conditions of the invitation for bids, is best in price.

Step-by-Step Bidding Procedures:

STEP 1: Prepare Bid Package. The recipient must prepare a bid package detailing the specific goods or services to be provided by the contractor.

The box on the next page provides a bid package checklist for the recipient.



CHAPTER 4

PROCUREMENT PROCEDURES

Bid Package Checklist (Housing and Non-housing)

<u>Document</u>	<u>Construction</u> (sample in Appendix K)	<u>Materials/Equipment</u> (sample in Appendix J)
Advertisement and Invitation for Bids	X	X
Instructions to Bidders	X	X
- includes Bidder's Qualifications	X	
Bid Format (including all deductive or additive alternates as applicable)	X	X
Bid Bond	X	X
Performance Bond	X	
Payment Bond	X	
Standard Form Contract	X	X
Special Contract Conditions	X	X
Wage Rate Decision	X	
Federal Labor Standards Provisions (HUD 4010)	X	
Architect's Certification of Compliance with the Architectural Barriers Act of 1968 (if applicable)	X	
Drawings and Technical Specifications	X	X (if any)

The GLO-DR program recommends that the recipients' attorney reviews the construction contract prior to the bid and certify that it meets all program, state, and federal requirements. Contract terms should include but not be limited to:

- Name of both parties to the contract;
- Effective dates (start date and end date);
- Description of the work to be performed by the building contractor;
- The amount and methods of payment;
- Warranty requirements;
- Certificate of Eligibility requirements;
- Required federal provisions, especially for compensation;
- Removal of debris and equipment;
- Change order procedures;
- Inspection requirements; and
- Amendment procedures.



CHAPTER 4

PROCUREMENT PROCEDURES

STEP 2: Comply with Davis-Bacon Act Requirements. The recipient must obtain prevailing wage rates for the local area as required by the DBRA and incorporate those wage rates into the construction procurement. See Chapter 6, Davis-Bacon Labor Standards, for specific information on these requirements.

STEP 3: Advertise for Bids. The procedure for advertising for bids is as follows:

- Publish once a week for two consecutive weeks prior to bid opening in a local newspaper. The date of the first publication must be before the 14th day prior to opening of the bids, and the two published notices must be at least seven days apart;
- Ensure that the first publication date is at least 14 days prior to the bid opening date;
- Ensure that the two published notices are at least seven days apart;
- Describe work or item to be purchased or state where specifications can be obtained;
- Include time and place for receiving and opening bids (count 15 calendar days from the first advertisement date);
- Include name and position of local official or employee to whom bids are sent;
- Indicate whether bidder should use lump-sum or unit pricing;
- Indicate type(s) of bond(s) required by the bidder;
- Indicate whether contract will be awarded within 30 or 60 days; and
- Identify GLO-DR contract number.

If an addendum to the bid package is necessary, it must be distributed to each potential bidder. The distribution of an addendum shall be verified either by statements of receipt or registered/certified mail receipts, which shall be included in the public works construction file. The addendum shall allow adequate time for consideration in bid preparation (usually at least one week), and if adequate time is not available, the bid opening date must be extended. This will require re-advertisement of the bid opening with the new date, time, and place.

The GLO-DR program recommends the Dodge Report, *Texas Contractor*, the Minority Business Development Center, and regional newspapers for advertising bids. See Chapter 10, Civil Rights Requirements, for further information on Minority Business Centers.

STEP 4: Promote Participation of MBEs. The recipient should actively take steps to encourage proposals from small, minority, and female-owned businesses.



CHAPTER 4

PROCUREMENT PROCEDURES

STEP 5: Hold the Bid Opening.

- Note the date and time of receipt of each bid on the bid envelope, which must be kept with the original bid even following the bid opening;
- Open and read aloud each bid;
- Record the base bid, along with any alternates, on a bid spreadsheet; and
- Announce the apparent low bidder and all bidders with complete packets.

The recipient or their designee (usually the engineer) should carefully review the bids submitted and the low bidder's statement of qualifications and references. Awarding the contract on the same date as the bid opening does not generally allow sufficient time to research and review the documents and ensure that the low bidder has provided all the required forms, bonds, certifications, as well as qualifications and references.

- **Municipalities** are required by state law to award the contract to the lowest responsible bidder. The municipality may reject any and all bids. [Texas Local Government Code Section 252.043 (a)]
- **Counties** are required by state law to award the contract to the responsible bidder who submits the lowest and best bid, or must reject all bids and publish a new notice. [Texas Local Government Code, Section 262.027(a)]

Overbids: If the bids received exceed the designated budget, the recipient has the following options:

- Reject all bids and re-bid the project;
- Accept the deductive alternates in the bid packet (if applicable); or
- Delete bid items before contract award, if all bidders agree in writing to changes.

If all bids received exceed the amount of the construction budget, YOU MAY NOT NEGOTIATE THE CONTRACT PRICE SOLELY WITH THE LOW BIDDER.

NEGOTIATION OF THE CONTRACT PRICE SOLELY WITH THE LOW BIDDER WILL RESULT IN THE DISALLOWANCE OF GLO-DR FUNDS FOR CONSTRUCTION COSTS.

STEP 6: Clear the Contractor. The recipient must verify the contractor's eligibility through the EPLS. See Chapter 6, Davis-Bacon Labor Standards, for details.



CHAPTER 4

PROCUREMENT PROCEDURES

NOTE: The contract may be awarded before the contractor is cleared, but may NOT be executed without obtaining EPLS clearance.

STEP 7: Award the Contract.

STEP 8: Execute the Contract. The recipient must submit the Bid Tabulation, Bid Schedule, and *Financial Interest Report* to the GLO-DR program within 30 days of executing the contract, and submit the *Labor Standards Record* prior to the first Request for Payment for construction work.

Documentation for Construction Procurement

Requirement	Small Purchase	Formal Bids
Small Purchase Procurement Record	X	
Bid package ads and Bid opening documentation		X
Davis-Bacon Documentation – Labor Standard Record & Final Wage Compliance Report	X (if over \$2,000)	X
Executed Contract	X	X
Financial Interest Report	X	X
Start of Construction	X	X
Certificate of Construction Completion	X	X

Third Party Procurement Services: A recipient may choose to purchase certain goods and services through a third party, such as the Texas Association of School Boards “Buy Board”, or the Houston-Galveston Area Council “HGACBuy”. All procurement requirements apply to purchases through these entities; however many steps may be conducted by the third party rather than the recipient. The recipient must retain a copy in the contract files of the cooperative agreement with the third party certifying the type of procurement process used.

Contract Provisions Required

Regardless of the type of procurement used, the recipient must execute a contract with the construction contractor or materials provider to document the work to be completed, the agreed price, and compliance with applicable state and federal requirements. The recipient will determine the type of contract used, ensuring that the type selected is appropriate for the particular procurement and for promoting the best interest of the program or project involved. Types of contracts include:

- Fixed price contracts;
- Cost reimbursable contracts;



CHAPTER 4

PROCUREMENT PROCEDURES

- Purchase orders; and
- Incentive contracts.

Any other type of contract must be approved in writing by GLO-DR before execution.

The GLO-DR program discourages the use of "Lump Sum" fixed price contracts. If a Lump Sum is used to include all work for a project, NO CHANGE ORDERS will be approved by the GLO-DR program, as there will be no unit price determined in the contract. The recipient will be responsible for confirming and documenting the work and quantities in the GLO-DR contract Performance Statement, regardless of the description of work in the construction contract.

Contracts in excess of \$10,000 must comply with:

- Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in the United States Department of Labor ("DOL") regulations (41 CFR Chapter 60).
- Provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

Contracts less than \$10,000:

- Do not have to include EEO language; and
- Do not have to include provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement.

Contracts must include:

- Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874);
- Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7);
- Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330);
- Notice of awarding agency requirements and regulations pertaining to reporting;
- Requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract;
- Requirements and regulations pertaining to copyrights and rights in data;



CHAPTER 4

PROCUREMENT PROCEDURES

- Access by the recipient, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions;
- Retention of all required records for three years after recipients make final payments and all other pending matters are closed;
- Compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act [42 U.S.C. 1857(h)], Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15). (Contracts and subcontracts of amounts in excess of \$100,000); and
- Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

Contracts less than \$50,000:

- Do not have to include administrative, contractual, or legal remedies for instances in which a contractor violates or breaches the contract terms; and
- Will provide for such remedial actions as may be appropriate.

Bonding Information

Surety Bond: A surety bond is a three-party instrument between a surety, the contractor and the project owner. The agreement binds the contractor to comply with the terms and conditions of a contract. If the contractor is unable to successfully perform the contract, the surety assumes the contractor's responsibilities and ensures that the project is completed. Bonds and other forms of surety must be made payable to the locality.

Bid Bond: A bid bond guarantees that the bidder, upon acceptance of the contract, will honor his bid as submitted and within the time specified. If a bidder does not honor his bid as submitted, the bid bond, which is retained by the recipient, is used to offset any additional cost from completing the construction with another contractor. A 5% bid bond is recommended for all GLO-DR contracts. A certified or cashier's check or U.S. Savings bond may be submitted in lieu of the bid bond.

Performance Bond: A performance bond guarantees that the contractor will perform the contract in accordance with its terms. A performance bond is required below unless otherwise stated in the IFB.

When applicable, a separate performance bond must be provided for each construction contract awarded and must reference the contract number(s) for which



CHAPTER 4

PROCUREMENT PROCEDURES

the bond is provided. Any required performance bond(s) must be filed within 30 days from the date of the Notice of Award.

Payment Bond: A payment bond guarantees payment from the contractor to persons who furnish labor, materials, equipment and/or supplies for use in the performance of the contract. The payment bond is solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the prime contractor or a subcontractor to supply public work labor or material. Any required payment bond(s) must be filed within 30 days from the date of the Notice of Award.

For contracts in excess of \$25,000, the recipient should require the contractor to execute a payment bond in the amount of the contract before beginning the work.

- If the payment bond is not furnished, the recipient is subject to the same liability that a surety would have if the surety had issued the payment bond and the recipient had required the bond to be provided. [Texas Government Code, Chapter 2253.022(f)]
- **Counties only:** For contracts of \$50,000 or less, counties may provide in the bid notice or request for proposals that no money will be paid to the contractor until completion and acceptance of the work or the fulfillment of the purchase obligation to the county. [Texas Local Government Code, Chapter 262.032(c)]

Changes to a Construction Contract

When a change to the project is necessary during project construction, the recipient should request an adjustment to both the GLO-DR contract and the construction contract. The Change Order makes a change in quantities or tasks to the **construction contract only**. The GLO-DR program does not sign or execute the Change Order, but does review all Change Orders on GLO-DR projects to ensure that all costs are eligible and procured according to GLO-DR requirements.

To submit a Change Order, the recipient must:

- **For HOUSING** – Submit *Project Setup Request, Change Order Request Form, Unsecured Forgivable Promissory Note*, and all necessary backup documentation. HOUSING Change Order Requests must be emailed to: DR.Housing.Change.Orders@GLO.STATE.TX.US
- **For NON-HOUSING** - Submit *Construction Contract Change Order Form*, and all necessary backup documentation. NON-HOUSING Change Order Requests must be emailed to: 57947_ChangeOrders@HNTB.com



CHAPTER 4

PROCUREMENT PROCEDURES

Considerations and limitations surrounding the use of change orders:

- The recipient must have sufficient grant or local funds available to meet any increased costs.
- Change orders may not:
 - Increase the original contract price by more than 25%; or
 - Decrease the original contract price without the consent of the contractor by more than 25% for municipalities and 18% for counties. [Texas Local Government Code Section 252.048(d) and Section 262.031(b)].

NOTE: Change orders that result in a cumulative increase of more than 25% of the original contract amount are not allowed for GLO-DR funding.

The state of Texas considers a change in the construction contract price of greater than 25% to be non-competitive, as other potential bidders did not have the opportunity to bid on the true scope of the project during the procurement process.

Project changes reflected in a Change Order may also require an amendment or modification to the GLO-DR contract Performance Statement or Budget. These items should be submitted together as described in Chapter 9, Contract Amendments.

4.1.1 Non-Competitive Negotiation Procurement

Non-competitive negotiation may be used when the award of a contract is not feasible under small purchase, competitive bidding or competitive negotiation procedures. This may be due to single source availability or inadequate competition, determined after solicitation of a number of sources. Non-competitive negotiation procurement is most often used for emergency situations.

This method is allowed under the following situations [See 24 CFR 85.36(d)(4)]:

- **Single Source:** This method allows procurement through solicitation of a proposal from only one source when the item or service is only available from a single source.
- **Public urgency/emergency situations:** State laws generally allow noncompetitive negotiations in such cases where the urgency for carrying out the project will not permit delays caused by competitive advertising/solicitation.

Approval by the GLO-DR program is required prior to procurement by non-competitive negotiation. All requests for exceptions to competitive procurement requirements must be submitted in writing by the recipient.



CHAPTER 4

PROCUREMENT PROCEDURES

4.1.2 Recordkeeping Procedures

The GLO-DR program recommends that the recipient have a written set of procedures that detail how procurements will be made. This purchasing function should be assigned to one individual whose responsibility it will be to make all procurements and issue all contracts. The purchasing officer should also be responsible for ensuring that purchases are made in accordance with all local, state, and federal regulations and that proper documentation is maintained to support the purchase.

The recipient must maintain records that are detailed enough to show the history of each procurement. At a minimum, records must demonstrate how the recipient:

- Executed price sampling for small purchases, or established [published] RFQ solicitation;
- Selected the method of procurement and the type of contract to be used;
- Determined the bids or proposals to accept and the ones to reject; and
- Computed the basis for the contract cost or price.

The recipient must submit a *Financial Interest Report* for all businesses and other entities contracted to provide products or services in whole or in part for a GLO-DR project. This report:

- Describes the work to be performed by the business or other entity;
- Verifies that all required clearances have been completed prior to executing a contract with the business or other entity;
- Discloses the financial interest of the business or other entity; and
- Provides Minority Business Enterprise information for the business owner.

All contracts for \$2,000 or more must be reported on the *Financial Interest Report*.

4.1.3 Professional Services

The recipient must establish and maintain separate files for records relating to the procurement of other professional service provider to detail the procurement process undertaken as applicable. The files for professional services procurement should contain the following information:

- A copy of the RFQ;
- A copy of the RFQ public notice and documentation relating to the distribution of the RFQs (minimum of five sent):
 - Email – printout of the sent email with header visible,
 - Fax – confirmation page showing the fax was successfully sent, or



CHAPTER 4

PROCUREMENT PROCEDURES

- Mail – return receipt for certified mail;
- A copy of the RFQ cover letter sent to each interested party;
- A copy of each respondent's reply to the recipient's RFQ;
- A copy of each respondent's rating worksheet (if applicable);
- A copy of the procurement summary sheet (if applicable);
- A copy of council/commissioner court action awarding the contract; and
- A copy of the executed professional services contract.

4.1.4 Construction and Material Purchases

The recipient must establish and maintain separate files for records relating to the procurement of a construction contractor or materials supplier to detail the procurement process undertaken. The files for construction and material purchases procurement should contain:

- Bid Document(s) with Labor Standards Provisions included;
- Contract Document(s) with Labor Standards Provisions included;
- Actual Advertisements for Bids (either full page or with publisher's affidavits) or evidence of quotes/estimates received (for small purchase procurement);
- Bids Received (or quotes received);
- Bid Tabulation Sheet(s) (if applicable); and
- As-built Plans - maps shall be provided in digital format containing the source map data (original vector data) and the graphic data in files on machine readable media, such as compact disc.

4.1.5 Federal & State Laws Governing Procurement

The laws and regulations described in this section apply to the procurement of services, supplies or non-real property in GLO-DR-funded projects. Procurement of land or property rights is covered in Chapter 5, Acquisition of Real Property.

4.1.6 State Laws & Regulations

Texas Local Government Code - Chapter 252 (Municipalities) and Chapter 262 (Counties): The full text of the Chapters from the Texas Local Government Code can be found via the internet at <http://www.legis.state.tx.us/>.

Chapter 252 Municipal Recipients Construction Bidding Procedures: The Department's municipal recipients are generally required to conduct competitive sealed bid procurement for any and all contracts over \$50,000.

Municipalities are required by state law to advertise their invitation for bids in a newspaper published in the municipality at least once a week for two consecutive



CHAPTER 4

PROCUREMENT PROCEDURES

weeks. The date of the first publication must be before the 14th day before the date set to publicly open the bids. If no newspaper is published in the municipality, the notice must be posted at city hall for 14 days prior to the date of the bid opening [Texas Local Government Code Section 252.041(a)].

Chapter 262 County Recipients Construction Bidding Procedures: The Office's county recipients are generally required to conduct competitive sealed bid procurement for any and all contracts over \$50,000.

Counties are required by state law to publish a notice in a newspaper of general circulation in the county at least once a week, with the first day of publication occurring before the 14th day before the date of the bid opening. If there is no newspaper of general circulation in the county, the notice must be posted in a prominent place in the courthouse for 14 days prior to the date of the bid opening [Texas Local Government Code Section 262.025(a)].

Texas Government Code, Chapter 2253: Public Work Performance and Payment Bonds covers bonding requirements.

Texas Government Code, Chapter 2254: This code as amended is also known as the Professional Service Procurement Act. This code governs the local government procurement of professional services. It prohibits the procurement of architects or engineers, based on bid price and requires government entities to first select the most highly qualified provider based on demonstrated competence and qualifications, and then attempt to negotiate with that provider a contract at a fair and reasonable price. The full text of this act can be found via the internet at <http://www.legis.state.tx.us/>.

Texas Local Government Code, Chapter 171: This code as amended requires local government officials to disclose conflicts of interest and sets forth rules that require officials to abstain where they are in a position to a vote or make a decision on any matter involving a business entity or real property for which they have an interest in. The full text of this Chapter from the Texas Local Government Code can be found via the internet at <http://www.legis.state.tx.us/>.

The State of Texas Engineering Practice Act, Article 3271a: This Act states that a registered professional engineer must be hired to prepare plans, specifications, and estimates for any public works activities in accordance with this Act. The engineer must directly supervise the project in order to ensure the public health, safety, and welfare; however, this Act does not apply to road maintenance or betterment work undertaken by Counties. The full text of this act can be found via the internet at http://www.tbpe.state.tx.us/downloads/law_rules_31011.pdf.

Procurement Standards: UGMS - Governor's Office of Budget and Planning (June 2004).



CHAPTER 4

PROCUREMENT PROCEDURES

In addition to applicable federal and state regulations, many recipients have laws and regulations regarding procurement. Each recipient should be aware of local laws that may affect its procurement policies.

In cases where state or local law is stricter than federal regulations, the local recipient must follow the state or local laws and in cases where state or local law is more lenient than federal regulations, the local recipient must follow federal regulations.

4.1.7 Federal Laws & Regulations

HUD Conflict of Interest regulations at 24 CFR 570.489(h): This regulation sets forth prohibitions against the use of GLO-DR funds by employees and officials for private gain.

OMB Circular A-102, CFR 24 Part 85.36 (Grants and Cooperative Agreements with State and Local Governments): A-102 governs the use of grants, contracts and cooperative agreements. Implementation regulations can be found at 24 CFR Part 85. The full text of A-102 can be found via the Internet at <http://www.whitehouse.gov/omb/circulars/a102/a102.html>.

4.2 Housing Specific Requirements

All housing subrecipients are expected to use an assignment method for bid package awards. Individual homes should not be awarded on a single home basis.

Local Government Code Section 252.022 exempts a Council of Government's ("COG") activity from competitive procurement if it is necessary to preserve or protect the public health and safety of the community's residents. If this is the case, the COG must provide a written explanation of why the non-standard procurement method is required to be utilized for housing affected by the Hurricane.

Bidding Procedure

Special conditions for bidders must be included in the bid package, as well as specifications, general conditions, contractor certifications, and any other special conditions such as labor requirements. The HUD Act of 1968, Section 3, states that every effort should be made to use local contractors and material suppliers.

Bid Amount Limitations

A cost variance maximum of 15% above or below the pre-determined work write-up/cost estimate must be set. If the bids received are not within the established range, the two options are:

- Reject all bids and restart the bid process; or



CHAPTER 4

PROCUREMENT PROCEDURES

- Modify the existing IFB by eliminating items or changing specifications. If an item is eliminated, it must be eliminated from all bids and the bids reevaluated without action by the bidders.

Negotiations

If all bids exceed the 15% Limitation Range, negotiation with the lowest qualified bidder is acceptable. No changes to the bid may be made however, unless other bidders are also permitted to be re-evaluated. All negotiations must be recorded, meaning that at no time may a bidder who is not the lowest qualified bidder be offered a contract for more than a pre-recorded negotiated offer.

Recordkeeping for the Bid Opening: Minutes of the bid opening, along with a tabulation of the bids, must be placed in the contract file. After contract award, the opened bids must be kept on file and available for inspection by anyone desiring to see them. However, any trade secrets and/or confidential information in the proposals are not open for public inspection [Texas Local Government Code Sections 252.049(b) and 262.026(b)].

Bonding Requirements

Bonding requirements for housing projects prior to the start of construction state that the following bonds must be submitted (Texas Government Code, Section 2253.021):

- Performance Bonds - 100% performance bonds on public works contracts in excess of \$100,000. A performance bond in the amount of the contract is executed solely for the protection of the state or local governmental entity awarding the contract. This bond secures the fulfillment of the building contractor's obligations in accordance with the plans, specifications, and contract documents.
- Payment Bonds - 100% payment bonds on public works contracts in excess of \$25,000. A payment bond in the amount of the contract is executed to insure payment to all persons supplying labor and material in the execution of the work described in the contract.

4.3 Non-Housing Specific Requirements

There are no other requirements that are specific to Non-Housing only.



CHAPTER 5

ACQUISITION OF REAL PROPERTY

ACQUISITION OF REAL PROPERTY

5.1	General Requirements (Housing and Non-Housing)	61
5.1.1	Types of Acquisition	62
5.1.2	The Acquisition Process	64
5.1.3	Appraisal Requirements.....	72
5.1.4	Recordkeeping and Reporting.....	73
5.1.5	Relocation	73
5.2	Housing Specific Requirements	75
5.3	Non-Housing Specific Requirements	76



CHAPTER 5

ACQUISITION OF REAL PROPERTY

ACQUISITION OF REAL PROPERTY

All property acquired for any activity that is funded, in whole or in part, with GLO-DR funds is subject to the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 ("URA") as amended. GLO-DR funded projects are subject to the Federal acquisition and relocation requirements of the URA. The URA provides for uniform and equitable treatment of persons displaced from their homes, businesses, or farms resulting from rehabilitation, demolition, or private acquisition carried out under federally assisted programs, regardless of their income, and establishes equitable land acquisition policies.

5.1 *General Requirements (Housing and Non-Housing)*

NOTE: While most of the following applies to both Housing and Non-Housing, if there are questions during implementation as to whether or not any of the following apply to a specific situation, please consult your Grant Manager for guidance.

- All acquisition activities must be completed, including executed sales agreements or donation forms, prior to the related construction activities being bid. No GLO-DR construction funds will be released until the *Real Property Acquisition Report* has been submitted to the GLO-DR grant management team.
- Addition or deletion of acquisition activities to the GLO-DR contract must be approved by the GLO-DR program.
- Each property owner must be properly informed of his/her rights, as required by law, and the recipient must be able to document that this was done. Each property owner is entitled to the payment of just compensation for his/her land, even if he or she is a direct beneficiary of the project.
- Before requiring the property owner to surrender possession of the real property, the recipient must pay the agreed purchase price to the owner; in the case of condemnation, deposit with the court, for the benefit of the owner, an amount not less than the approved appraisal of the fair market value of such property.
- The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modifications in the proposed terms and conditions of the purchase.

Standards of Appraisal: The format and level of documentation of an appraisal depends upon the complexity of an appraisal problem.

Uniform Relocation Act ("URA"): All of the policies and procedures concerning the acquisition and relocation are covered by the URA and Real Property Acquisition



CHAPTER 5

ACQUISITION OF REAL PROPERTY

Policies Act of 1970 as amended which covers all HUD assisted programs. The URA requirements can be found at 49 CFR Part 24 (see 54 FR 8912).

Voluntary Relocation: A voluntary relocation occurs when “the person is an owner-occupant of the property who moves as a result of an arm’s length acquisition (not condemnation) or as the result of voluntary rehabilitation or demolition of the real property”. There are three additional requirements:

- “The grantee determines and informs the owner in writing that it will not use its power of eminent domain to acquire the property if the negotiations fail to result in an amicable agreement.”
- “No specific site or property needs to be acquired...” in order for the project to proceed.
- “The grantee informs the owner of its estimate of the fair market value of the property.”

5.1.1 Types of Acquisition

Acquisition falls under two categories: Voluntary or Involuntary. The requirements of the acquisition process vary based on the type of acquisition being conducted. Involuntary acquisition triggers all requirements of the URA. Voluntary acquisition does not trigger the URA; however, certain notification provisions are necessary to record all sales and ensure fairness.

Voluntary Acquisition: According to 49 CFR, Part 24, Subpart B, voluntary acquisition is defined as follows:

For recipient with eminent domain authority, if:

- No specific site is needed and any of several properties could be acquired for project purposes;
- The property is not part of an intended, planned or designated project area where other properties will be acquired within specific time limits;
- The recipient informs the owner in writing of the property’s market value;
- The recipient also informs the owner in writing that the property will not be acquired, through condemnation, if negotiations do not reach an amicable agreement; and
- If tenants are displaced, the tenants are provided relocation assistance.

For recipient without eminent domain authority, if:

- The recipient notifies the owner in writing of the property’s market value;
- The recipient notifies the owner prior to making an offer, that it will not acquire property if an amicable settlement cannot be reached; and
- If tenants are displaced, the tenants are provided relocation assistance.



CHAPTER 5

ACQUISITION OF REAL PROPERTY

Voluntary sales are negotiated between the owner and the recipient without the threat of eminent domain or condemnation. An appraisal is not required in voluntary sales; a market estimate can be used to determine value. However, the seller must be informed of certain facts about the acquisition.

Government-owned property: Purchases of property owned by federal, state, or local government where the recipient or its agent does not have the power of eminent domain are considered voluntary, as the recipient might not ever be able to purchase the property if the government owner is not agreeable to the offer.

Involuntary Acquisition: Involuntary acquisition is defined as when:

- The project is site specific; and
- The recipient will exercise eminent domain to acquire the property when negotiation fails.

In cases where the recipient exercises its power of eminent domain, or is willing to use that power if necessary, it must follow a set of URA requirements that govern involuntary acquisitions. The procedures are in place to protect the rights of private citizens whose property is being acquired by the government, and to ensure that they are treated equitably and uniformly.

The recipient must submit an *Involuntary Acquisition Activities Approval Form* and receive written approval before using involuntary acquisition procedures.

Methods of Acquisition

The recipient may acquire the property through:

- Donation
- Negotiation
- Condemnation

Donations: Donations are essentially sales with a \$0 purchase price, though slightly different documentation is required for involuntary acquisition. A transaction may be considered a donation if the owner agrees to donate the property to the recipient.

If the recipient requires a specific site to complete the project, the acquisition is involuntary by definition; however, the acquisition may still be considered a donation if the owner agrees to donate the property.

Negotiated Sale / Just Compensation for Voluntary Acquisition: When the recipient needs to acquire a property and has determined that Voluntary Acquisition will be used, the recipient may make an offer with a purchase price that is established or calculated from documented records, such as appraisal or property tax records. If the seller agrees to the offer based on the just compensation, the



CHAPTER 5

ACQUISITION OF REAL PROPERTY

sale is considered as just compensated sale. If the seller disagrees with the original offer, but would accept a higher offer, the final sale is considered as a negotiated sale.

Negotiated Sale for Involuntary Acquisition: Involuntary Acquisition is typically considered a negotiated sale because the recipient must:

- Appraise the property and invite the owner to accompany the appraiser;
- Review the appraisal;
- Establish just compensation for the property;
- Provide owner with written offer and summary statement for property to be acquired;
- Negotiate with owner for the purchase of property;
- If negotiations are successful, complete the sale and reimburse property owner for related incidental expenses; and
- If negotiations are unsuccessful, consider an administrative settlement to complete the sale. Administrative settlement is when negotiations result in a purchase price exceeding the offer of just compensation.

Condemnation: When the recipient has the power of eminent domain, and chooses to exercise this option, the recipient may acquire the property through condemnation. The recipient may exercise Condemnation as only the last resort. The recipient must notify the GLO-DR program and receive prior written approval before using condemnation acquisition procedures.

5.1.2 The Acquisition Process

The term “real property” in the context of acquisition refers to any kind of permanent interest in real property. Acquisition rules apply to projects with GLO-DR assistance whenever:

- Fee simple title to the property is purchased;
- Permanent easements - not temporary easements - are purchased;
- Properties subject to a life estate are acquired; and
- Property that is leased for a term that allows an extension of 50 years or more.

Property leased for less than 50 years is not considered acquired property. Improvements constructed on property that is not publically owned or recorded as a right-of-way or easements are not eligible GLO-DR projects.

Acquisition rules must be followed for all federally-funded projects. The acquisition rules apply whenever a recipient:



CHAPTER 5

ACQUISITION OF REAL PROPERTY

- Undertakes the purchase of property directly;
- Provides a nonprofit or for-profit entity with funds to purchase the property;
- Hires an agent or consultant to act on their behalf;
- Undertakes an acquisition on or after the date of submission of an application to fund a GLO-DR activity, unless the recipient demonstrates that the acquisition was unrelated to the proposed activity; or
- Undertakes an acquisition before the date of submission of the application, if that acquisition was intended to support a subsequent GLO-DR activity.

Basic Steps for Acquisition

Below is a sequence of events for a timely and cost effective acquisition process.

1. Determine the location and size of property(s) needed for the project.
2. Determine if the acquisition(s) is voluntary or involuntary.
 - a. If the acquisition is voluntary, proceed to Step 3.
 - b. If the acquisition is involuntary, submit *Involuntary Acquisition Activity Approval*.
3. Inform the property owner(s) of their rights and provide documentation.
4. Offer to pay just compensation based on fair market value, but seek donation of the property.

If the owner(s) will not donate, *then*:

5. Extend offer of approved just compensation amount.

If the owner(s) will not accept this offer, then you may:

6. Negotiate with the property owner(s) (within limits).

If the owner(s) will not negotiate, you may:

7. Go to court and condemn the property. (Restrictions on condemnation apply. Contact the GLO-DR program for written approval prior to condemning property.)

The simplest and most cost effective way to acquire property is through donation. However, each property owner(s) is entitled to just compensation for his/her property even if he or she is a direct beneficiary of the project. The property required for the project may all be acquired by donations, or any combinations of the preceding steps.

For additional assistance on acquisition, please contact the Grant Manager.



CHAPTER 5

ACQUISITION OF REAL PROPERTY

STEP 1: PROJECT FUNDS RELEASED

- Determine who will be responsible for coordination of acquisition/relocation activities.
- Establish recordkeeping procedures for each parcel of property according to this manual. Include copies of all documents. Secure services of an attorney. The acquisition of property requires the filing of legal documents.

STEP 2: BASIC PREPARATIONS

- Determine the parcels to be acquired and if eminent domain will be used if the owner(s) of any parcel declines to accept the acquisition offer.
- Determine that the parcels to be acquired are all consistent with the scope of the project and with the preliminary engineering plans, surveys and maps.
- Obtain preliminary title evidence, boundary surveys, and legal descriptions. Verify clear and accurate titles.
- Prepare a map describing the project and showing the proposed acquisitions. Take this map to each property owner or show it at public meetings when asking for donations.

STEP 3: INFORM THE OWNER(S)

- Send each property owner(s) the appropriate documents by certified mail or hand delivery. Give the name and phone number of the person to be contacted for further information.

Voluntary Acquisition

- *Notification of Voluntary Acquisition; and*
- *Donation Forms: Notice to Owner for Donations of Easements and Rights of Way; Owner Release Form for Donated Property; and Notice of Agreement to Donate.*

Involuntary Acquisition

- Submit *Involuntary Acquisition Activity Approval Form* to the GLO-DR program for approval.
- *Notice of Interest/Intent to Acquire*: This indicates an interest in acquiring the property or an easement. It is important to note that it is not a notice to vacate nor does it establish eligibility for relocation payments or assistance.
- When a public recipient acquires your property (available from the GLO-DR program upon request).



CHAPTER 5

ACQUISITION OF REAL PROPERTY

- Donation Forms: *Notice to Owner for Donations of Easements and Rights of Way*; *Owner Release Form for Donated Property*; and *Notice of Agreement to Donate*.
- Obtain and file a signed receipt for the documents for each owner.

Note: Record keeping is very important. The grantee must document in the individual file that each owner has received the notification.

STEP 4: REQUEST DONATIONS

- Approach each property owner and request that they donate the land under consideration for acquisition.
- The owner(s) must understand that he is entitled to an appraisal. The payment of just compensation is based on the “fair market value” of his property.
- The property owner(s) may waive his rights and benefits and make his donation without an appraisal or offer of just compensation.
- If the owner(s) decides to donate the property go to Step 9, but if the owner(s) declines to donate the property go to Step 5.

Note: If the owner accepts less than the market value of their property, it is not considered a donation - rather it is regarded as a voluntary sale and procedures for voluntary sales should be followed accordingly.

STEP 5: SELECT APPRAISER (for Involuntary Acquisition only)

- To perform a proper evaluation of the properties you intend to acquire, select and contract with an independent appraiser following the professional services procurement procedures outlined in Chapter 4, Procurement Procedures.
- Request statements of qualifications from several appraisers. To meet minimum qualifications, the appraiser must:
 - Have no interest in the property or be related to or in business with anyone having an interest, or an apparent interest, in the property to be acquired;
 - Be qualified, reputable, and professional;
 - Belong to a professional organization that has a code of ethics; and
 - Have previous experience in doing similar types of appraisals as will be required by the project.



CHAPTER 5

ACQUISITION OF REAL PROPERTY

- Execute a professional services contract between the recipient and the selected appraiser. The contract requires that the race, color, religion, nor ethnic characteristics of a neighborhood shall be considered in estimating the value of residential property.

Note: The grantee must have a process for evaluating qualification and selecting appraisers.

STEP 6: DETERMINE PURCHASE OFFER

Voluntary Acquisition

- Complete an estimate of the market value of the property. No formal appraisal is required but is allowable. However, the estimate of market value must be done by a person with knowledge of the local market. The recipient's files must include an explanation for the estimate, along with evidence that the owner received this estimate.

Involuntary Acquisition

- First Appraiser
 - If property is not donated, then the fair market value of the property must be established through an appraisal. (A property owner may choose to have an appraisal done, and then donate the property. This is because they are simply curious about the value, or they may want it for income tax purposes.)
 - The property owner(s) must be invited in writing to accompany the appraiser during the inspection of the property. (*Invitation to Accompany Appraiser*)
 - Perform an appraisal on each parcel to be acquired. The appraisal should be done in standard form, with degree and detail of analysis consistent with the complexity of the appraisal problem.
 - The appraiser must determine a precise fair market value and state this value in writing.
 - Easements can be evaluated on a short form or equivalent which summarizes the complete documentation that the appraiser must have on file.
- Review Appraiser
 - Each appraisal, regardless of value, must be reviewed. If the appraisal is complex, the review should be done by another appraiser; however, if it is simple and of low value, the review appraisal may be done by an independent qualified person.



CHAPTER 5

ACQUISITION OF REAL PROPERTY

- The review appraiser must visit the property and should invite the property owner(s) to be present. The review report must be written, signed and dated.
- The reviewer's recommendation of the fair market value of the property must be stated in writing.
- Just Compensation

Following a review of the appraisal, just compensation must be established. This amount cannot be less than the approved appraisal. Prepare a written *Just Compensation Determination Statement*, to be provided to the property owner(s). This statement must include:

- A legal description and location identification of the property;
- Interest to be acquired (e.g., fee simple, easement, etc.);
- An inventory identifying the building, structures, fixtures, etc. which are considered to be a part of the real property;
- The amount of the offer and a statement to the effect that this offer is:
 - The full amount believed by the community to be just compensation,
 - Not less than the fair market value of the property,
 - Disregards any increase or decrease in the fair market value attributable to projects for which the property will be acquired, and
 - Does not include any consideration or allowance for relocation costs;
- A definition of fair market value;
- A brief explanation of the principal appraisal techniques used in appraising the property;
- Any purchase option agreement (should be attached); and
- A statement apportioning the just compensation between the actual piece to be acquired and an amount representing damages to the remaining portion, if only a part of the parcel is to be acquired. If an "uneconomic remnant" is left, this should be purchased also.

STEP 7: WORK WITH THE OWNER(S)

Voluntary Acquisition

- Once the market value of the property in question has been determined, present the *Combined Notice of Market Value/Purchase Offer* to the owner(s).



CHAPTER 5

ACQUISITION OF REAL PROPERTY

- The notice must be provided before any sales contract is signed.
- The owner(s) has a number of choices at this point:
 - The owner(s) may now decide to donate the property; if so, go to Step 9.
 - The owner(s) may accept the just compensation as offered; if so, go to Step 9.
 - The owner(s) may make a counter offer that requests more money or terms other than those offered as just compensation; if so, go to Step 8.
 - The owner(s) may refuse or may indicate the refusal of any offer; if so, take no further action to acquire that property.

Involuntary Acquisition

- Once the just compensation for the property has been determined, present the *Written Purchase Offer* and *Just Compensation Determination Statement* to the owner(s). The offer must specify the date on which negotiation for the sale of the property must begin. This date must be the same date as the written offer. As with all notices, its receipt must be documented.
- A written Notice of Displacement (obtained from the GLO-DR program) must be issued within 30 days of the date specified for the initiation of negotiation, if the property to be acquired is owner or tenant occupied. See Section 5.5 Relocation.
- The owner(s) has a number of choices at this point:
 - The owner(s) may now decide to donate the property; if so, go to Step 9.
 - The owner(s) may accept the just compensation as offered; if so, go to Step 9.
 - The owner(s) may make a counter offer that requests more money or terms other than those offered as just compensation; if so, go to Step 8.
 - The owner(s) may refuse or may indicate the refusal of any offer; if so, go to Step 10.

STEP 8: SUCCESSFUL NEGOTIATIONS

- With the approval of the GLO-DR program, the recipient may accept an owner's counter offer (which will be higher than the just compensation) on the basis that:



CHAPTER 5

ACQUISITION OF REAL PROPERTY

- The cost of condemnation proceedings would be greater than the increase in price requested by the owner(s) (for involuntary acquisition only), or
- Selection of a new project site will result in significant delay in implementation of the project.
- Sign the written *Purchase Offer* if the negotiations are successful.
- Sign contract for sale.

STEP 9: COMPLETE SETTLEMENT

- Execute the deed. This should be done by an attorney.
- Complete the *Statement of Settlement Costs* and give to the owner(s). This form identifies all settlement costs regardless of whether they are paid at, before, or after closing and must clearly separate charges paid by the owner(s). If a title or escrow company is used, the standard Real Estate Settlement Procedures Act ("RESPA") form is acceptable.
- Obtain a receipt for the purchase price.
- Pay incidental costs. The recipient must reimburse the owner(s) to the extent deemed "fair and reasonable" for incidental costs associated with the transfer of title (i.e., recording fees, transfer taxes, penalty cost or other charges for prepayment of any pre-existing recorded mortgages and the like).
- Pay the net amount. Present the owner(s) with a check for the agreed purchase price.

STEP 10: CONDEMNATION

If condemnation is determined to be necessary, the following issues must be addressed:

- An attorney must carry out the condemnation proceedings since it is a legal action.
- A resolution authorizing the proceedings must be passed by the recipient.
- File copies of surveys and maps in the office in which instruments affecting real property in the county are recorded.
- Initiation of proceedings in the circuit court of the county in which the property is located.
- A deposit of the amount determined to be just compensation must be placed in an escrow account with the court.

You must receive prior written approval from the GLO-DR program for condemnation.



CHAPTER 5

ACQUISITION OF REAL PROPERTY

The court will provide guidance in completing the settlement. Once condemnation proceedings have begun, the purchase must be completed in accordance with the verdict of the court. If the court rules that the property value is greater than the amount placed in escrow, the recipient must pay the deficiency. As with a negotiated sale, the recipient must also pay incidental costs and complete the *Settlement Cost Statement* as described above.

STEP 11: FINAL FOLLOW-UP

- Obtain final title evidence acknowledging the recipient as the owner.
- If the property is occupied, execute a short-term lease with the tenant until relocation can be completed.
- Ensure that a complete record on each piece of property acquired is available in the GLO-DR local files.

5.1.3 Appraisal Requirements

Involuntary acquisition requires an appraisal of the property to determine just compensation, except:

- The GLO-DR program may waive appraisal requirements for acquisition of property with an estimated market value of \$10,000 or less, if the valuation problem is uncomplicated; and
- Donated property, regardless of the value, does not require an appraisal as long as the owner signs a waiver releasing the recipient from the appraisal obligation after being informed in writing of the *Right to an Appraisal*.

For property with an estimated market value over \$10,000 but less than \$25,000, the GLO-DR program has the option of waiving the appraisal requirements if the recipient requests a waiver. The waiver request must include a valuation of the property and assurance that the property owner(s) has been offered the option of an appraisal.

The local official preparing the waiver valuation must have an understanding of the local real estate market to be qualified to make the waiver valuation (proposed acquisition is low value and uncomplicated). The recipient must have a reasonable basis for the waiver valuation and must still establish an amount believed to be just compensation to offer the property owner(s).

The purpose of the appraisal waiver provision is to provide recipients a technique to avoid the costs and time delay associated with appraisal requirements for low-value, non-complex acquisitions. The intent of the appraisal waiver provision is that waiver valuations be made by non-appraisers, freeing appraisers to do more sophisticated work. Since waiver valuations are not appraisals, there is no requirement for an appraisal review.



CHAPTER 5

ACQUISITION OF REAL PROPERTY

In all other circumstances, an appraisal must occur before negotiating the purchase price with the owner. The owner or owner's representative must be given the opportunity to accompany the appraiser while on site. (*Invitation to Accompany Appraiser*)

5.1.4 Recordkeeping and Reporting

The recipient is responsible for demonstrating compliance with URA requirements even though someone else might be carrying out the activities. Records should follow the progress throughout the project implementation regarding telephone calls, letters, personal visits, and attempts (successful or unsuccessful) to each of the people involved.

Failure to document acquisition actions taken may lead to an assumption that such action did not take place. The basic records required are:

- Identification of property and property owner(s);
- Evidence that the owner was informed on a timely basis about the acquisition and his or her rights;
- Voluntary Acquisition
 - Copy of the *Combined Notice of Market Value/Purchase Offer* and date of delivery to owner;
- Involuntary Acquisition
 - Copy of each appraisal report, including review appraiser's report, and evidence that owner was invited to accompany each appraiser on appraiser's inspection of the property;
 - Copy of the *Written Purchase Offer* and *Just Compensation Determination Statement* and date of delivery to owner;
- Copy of the purchase contract and documents conveying the property;
- Copy of *Settlement Cost Statement* identifying incidental expenses;
- Evidence that owner received net proceeds due from sale; and
- Copy of any appeal or complaint filed and recipient response.

Recipient must document their acquisition activities, if any, by submitting the *Real Property Acquisition Report* to the GLO-DR program.

5.1.5 Relocation

The trigger for the relocation requirements is displacement. Displacement occurs when a "person" (family, individual, business, farm, or nonprofit organization) moves from the real property, permanently, as a direct result of federally assisted acquisition, demolition or rehabilitation. A person may also be considered displaced



CHAPTER 5

ACQUISITION OF REAL PROPERTY

if the required notices are not given or provided in a timely manner and the person moves for any reason.

Processing Relocation Claims: The recipient is responsible for assisting relocatees in applying for benefits under the URA. Each homeowner affected must receive the appropriate notices/forms relating to voluntary relocation. These may include and may be accessible by contacting your Grant Manager.

Acquisition of Dilapidated Dwelling and Voluntary Relocation: If the recipient is acquiring a dilapidated structure and relocating the homeowner (either to the same site or another), please contact your Grant Manager immediately. The first letter that the recipient sends to the homeowner will be the General Information Notice.

Relocation Recordkeeping: Recordkeeping is an integral part of the recipient's responsibility. Refer to the relocation file checklist to ensure all voluntary relocation activities are complete. Separate files must be maintained on each household for three years following completion of the project or relocation payment, whichever is later.

Implementing a Temporary Relocation Program:

Step 1: Educating the Homeowner.

Step 2: Determine whether homeowners may remain in their home or must be temporarily relocated.

Step 3: Collect information from occupants relevant to their temporary move.

Step 4: Identify suitable temporary units and storage facilities.

Step 5: Provide assistance and relocate households.

Step 6: Authorize households to re-occupy units.

Reimbursable Expenses

- Lodging expenses for a hotel/motel unit will be eligible for reimbursement. The homeowner is responsible for paying their usual mortgage and utilities during temporary relocation.
- A rental unit that passes inspection, the program will pay the amount of rent and utilities for that unit up to the program maximum based on Section 8 Fair Market Rents. The homeowner is responsible for paying their usual mortgage and utilities during temporary relocation.
- Reasonable out-of-pocket rent and utility costs, provided that there is documentation that these costs are actually being charged.



CHAPTER 5

ACQUISITION OF REAL PROPERTY

Moving and Storage Costs

Moving costs, including packing, unpacking, storage and insurance, will be paid by the homeowner unless allowed by waiver from the GLO-DR program. These amounts will be based on the lowest responsive bid from a professional mover. A *Temporary Relocation Claim Form* must be used to determine appropriate costs.

Homeowners Remaining On Property During Construction

In some limited circumstances, homeowners may be allowed to remain on the property during the construction or rehabilitation phase, subject to the prior approval of the GLO-DR program. Required documentation includes:

- Temporary Housing Checklist;
- Storm-Damaged Home Demolition Agreement;
- Waiver of Liability and Hold Harmless Agreement;
- Contractor's agreement to remain on property; and
- Agreement to pay additional utility hook-up costs.

5.2 *Housing Specific Requirements*

Applicants receiving assistance under Single Family Rehabilitation or Construction are not eligible for relocation assistance under the URA. Individuals eligible for relocation assistance under the URA must be considered "displaced persons". Per 49 CFR 24.2(a)(9)(ii)(D), "A person who is not required to relocate permanently as a direct result of a project" is not considered a displaced person. Applicants receiving assistance under Single Family Rehabilitation or Construction will not be required to permanently relocate as a result of the program. Rather, these applicants will have their existing home rehabilitated or reconstructed. A tenant who resides in the unit is eligible for relocation.

The regulations that implement the URA can be found at 49 CFR Part 24. In addition, the HUD Handbook 1378: *Tenant Assistance, Relocation and Real Property Acquisition*, provides a detailed description of URA policies for HUD-funded programs. Recipients should use this handbook. The handbook can be requested from the Disaster Recovery staff, or can be obtained on the internet at <http://www.hudclips.org>.

A recipient working with residential properties may also be subject to the requirements of Section 104(d) of the Housing and Community Development Act, [42 U.S.C. § 5304(d)], the "Barney Frank Amendments", and HUD's Residential Anti-Displacement and Relocation Assistance Plan, federal CDBG law that governs displacement and relocation assistance of low/mod income residents (displaced persons whose income is at or below 80% of the area median family income ("AMFI")).



CHAPTER 5

ACQUISITION OF REAL PROPERTY

- The GLO-DR Housing Programs are not subject to the Anti-Displacement Act, due to the HUD waiver provided in the February 13, 2009, Federal Register, waiving the One-For-One Replacement of Units Damaged by Disaster, and the waiver of relocation benefits under Section 104(d), to the extent that they differ from URA.

Under URA statutory changes and the rule at 49 CFR Part 24, (Final Rule February 3, 2005) all persons (families, individuals, businesses, non-profit organizations, and farms) displaced (forced to move permanently) on or after April 2, 1989 as a direct result of rehabilitation, demolition, or acquisition (privately undertaken or public) for a HUD-assisted project are entitled to relocation payments and other assistance under the URA. Actual moving expenses can be reimbursed or a schedule provided by the U.S. Department of Transportation can be used, which can be found online at www.fhwa.dot.gov/realestate/index.htm. The new rule is triggered if the person moves on or after April 2, 1989 and the move is determined to be “for the HUD-assisted project.” Even a person forced to move before HUD approval of a project may be determined to have been displaced “for the HUD-assisted project”.

The purpose of this chapter is to ensure that:

- The rules which pertain to the acquisition of real property with Federal funds are followed;
- The owners of real property to be acquired are treated fairly, consistently, and without intimidation, thus minimizing litigation and congestion in the courts and promoting public confidence in federally assisted land acquisition; and
- Persons displaced as a result of the project are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injuries as a result of projects designed to benefit the public as a whole.

5.3 Non-Housing Specific Requirements

There are no other requirements that are specific to Non-Housing only.



CHAPTER 6

DAVIS-BACON ACT/LABOR STANDARDS

DAVIS-BACON ACT/LABOR STANDARDS

6.1	General Requirements (Housing and Non-Housing)	79
6.1.1	Objectives of Davis-Bacon	81
6.1.2	Procedures for Labor Standards Compliance	81
6.1.3	Restitution for Underpayment of Wages	87
6.1.4	Labor Disputes	88
6.1.5	Recordkeeping Requirements	88
6.2	Housing Specific Requirements	89
6.3	Non-Housing Specific Requirements	89



CHAPTER 6

DAVIS-BACON ACT/LABOR STANDARDS

DAVIS-BACON LABOR STANDARDS

This chapter offers a brief description of the laws and regulations associated with federal labor standards administration and enforcement, including GLO-DR contract requirements for Davis-Bacon compliance and responsibilities of the recipient.

Title I of the Housing and Community Development Act of 1974 requires the payment of Davis-Bacon Act prevailing wage rates (which are determined by the DOL) to all workers on GLO-DR construction projects in excess of \$2,000 (42 USC §5310). For assistance in determining which Davis-Bacon wage rates apply to a particular project, please see the *Davis-Bacon Coverage Chart* (see below) or contact the GLO-DR Division Labor Specialist.

Davis-Bacon Coverage Chart – GLO-DR Financed Activities

Financed Activity	Activity Covered?	Related Private Construction Covered?
Land Acquisition	No	No
Debris removal (no construction on-site contemplated)	No	No
Demolition (no construction on-site contemplated)	No	No
Demolition (to be followed by on-site construction)	Yes	<u>No</u> , if demolition done by grantee or its contractor before transfer of land to developer. <u>Yes</u> , if demolition contracted for by same entity doing private construction and will be carried out while contracting entity controls site.
Off-site improvements (street work, storm sewers, utility construction, etc.)	Yes	No
On-site improvements (excavation/grading, storm drainage, utility or sewer work, paving/walks/stripping, site lighting, landscaping, etc.)	Yes	<u>No</u> , if done by grantee or its contractor before transfer of land to developer. <u>Yes</u> , if improvements are designed and intended to serve building on the site; will be contracted for by same entity having building constructed; and will be carried out while contracting entity controls the site.
Cleaning during construction	Yes	Yes
Cleaning after construction to prepare for occupancy (separate	No	No



CHAPTER 6

DAVIS-BACON ACT/LABOR STANDARDS

from construction contract)		
Materials purchase	No	No
Equipment, machinery, and fixtures purchase (as opposed to installation)	No	No
Equipment, machinery, and fixtures installation (as opposed to, or in addition to, purchase)	<u>Yes</u> , if more than incidental (14% or over) amount of construction work involved.	<u>Yes</u> , if more than an incidental amount of construction work involved in the installation. ¹
Legal fees/accounting fees	No	No
Architectural and engineering fees	No	No
Construction management	No	No
Tenant allowances for non-construction expenses (furniture, business licenses, etc.)	No	No
Rehabilitation of residential property designed for fewer than eight families	No	No
Contracts for public utility services including electric light and power, water, steam, and gas	No	No ²

¹ Construction work involving installation is incidental if it is 13% or less of the total cost of the GLO-DR financed equipment; if it is more, a 4-part test applies. See Logsdon-Selig letter.

² From DOL Handbook: "...where a public utility is furnishing its own materials and is in effect extending its own utility system, such work is not subject to DBRA. The same conclusion would apply where the utility company may contract out such work for extending its utility system...."

6.1 General Requirements (Housing and Non- Housing)

Davis-Bacon Related Acts ("DBRA"): The DBRA (40 USC 27a–27b) require payment of locally prevailing wages and fringe benefits to laborers or mechanics employed on federally funded or federally assisted public works construction projects in excess of \$2,000 and residential construction or rehabilitation projects that involve eight or more units.

Contract Work Hours and Safety Standards Act ("CWHSSA"): The CWHSSA (40 USC 327–334) requires overtime pay for laborers and mechanics at a rate of one and one-half times the basic rate of pay for hours in excess of 40 per week worked on federally funded or federally assisted construction contracts in excess of \$100,000. CWHSSA also requires an assessment of liquidated damages at the rate of \$10 per



CHAPTER 6

DAVIS-BACON ACT/LABOR STANDARDS

day per worker for each day that each laborer or mechanic worked without receiving the required overtime compensation.

Copeland “Anti-Kickback” Act (18 USC 874 and 40 USC 276c): Makes it a federal crime for anyone to require a worker to give up or pay back any part of their wages. The Copeland Act requires every employer (contractors and sub-contractors) to submit weekly certified payroll reports and regulates permissible payroll deductions. Kickbacks of wages and falsification of certified payroll records are criminal violations and result in a \$5,000 fine, five years in prison, or both.

Fair Labor Standards Act of 1938, as amended (“FLSA”): The FLSA (29 USC 201, et seq.) establishes the basic minimum wage levels for all work and requires the payment of overtime at the rate of at least one and one-half times the basic hourly rate of pay for hours worked in excess of 40 per week.

Housing and Community Development Act: The Housing and Community Development Act of 1974, as amended, requires that all laborers and mechanics employed by contractors or sub-contractors on federally funded or federally assisted public works construction contracts in excess of \$2,000; or residential construction or rehabilitation projects involving eight or more units, shall be paid wages no less than those prescribed by the DOL and in accordance with the DBRA.

In whole or in part, if GLO-DR funds finance only a portion of a construction contract, labor standards are applicable to the entire construction contract.

With the exception of the situations listed below, all workers employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under GLO-DR program shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended.

- Real property acquisition.
- Architectural and engineering fees.
- Other services (legal, accounting, construction management).
- Other non-construction items (furniture, business licenses, real estate taxes).
- Construction contracts of \$2,000 or less.
- Rehabilitation of residential property designed for fewer than eight families.
- Demolition and/or clearance activities, unless related to construction (demolition and clearance as independent functions are not considered construction). Contact a GLO-DR Labor Specialist for assistance.
- If a public utility is furnishing its own materials and is extending its own utility system. The public utility company may even contract out such work for extending its utility system and still be exempt.



CHAPTER 6

DAVIS-BACON ACT/LABOR STANDARDS

6.1.1 Objectives for Davis-Bacon Labor Standards Compliance

The following five key labor standard objectives must be accomplished by the recipient and/or the GLO-DR Division in order to administer and enforce Davis-Bacon requirements and protect workers' rights:

- Apply Davis-Bacon requirements properly;
- Support recipient compliance with labor standards through education and technical assistance;
- Monitor recipient performance;
- Investigate probable violations and complaints of underpayment; and
- Pursue debarment and other available sanctions against repeat labor standards violators.

By executing the GLO-DR contract, recipients have agreed to administer and enforce Davis-Bacon requirements and have accepted the responsibilities described in this chapter.

6.1.2 Procedures for Labor Standards Compliance

A construction project covered by Federal labor standards requires a series of specific actions by labor standards personnel prior to the actual start of construction.

Step 1: Designate a Labor Standards Officer ("LSO") for the project.

The recipient must designate an LSO before the construction contractor is procured to ensure compliance with all applicable labor standards requirements and to act for and in liaison with the GLO-DR Division.

The LSO is responsible for the proper administration and enforcement of the Federal labor standards provisions on contracts covered by Davis-Bacon requirements. Tasks include:

- Providing labor standards preconstruction information and support to the recipient and other project principles, including ensuring that no prime or sub-contract is awarded to a contractor that is ineligible (i.e. debarred) for federally-assisted work;
- Providing the proper Davis-Bacon wage decision and ensuring that the wage decision and contract clauses are incorporated into the contract for construction;
- Monitoring labor standards compliance by conducting interviews with construction workers at the job site, reviewing weekly payroll reports; and ensuring that the applicable Davis-Bacon wage decision and the DOL "Notice to All Employees" (WH-1321 – must be obtained through the DOL), which informs



CHAPTER 6

DAVIS-BACON ACT/LABOR STANDARDS

employees of their rights and states that the LSO will receive complaints, are posted at the job site;

- Overseeing any enforcement actions that may be required;
- Carrying out interviews with employees on a regular basis and compiling an extensive sampling of the work classifications used on the project (records of the interviews must be maintained);
- Carrying out inspections on site to make sure required notices are being posted;
- Interviewing employees and reviewing wage rates to compare to weekly payroll records and reports to ensure compliance with applicable labor laws (copies of payroll records and report must be retained); and
- *Final Wage Compliance Report* must be maintained in the program file after construction has been completed.

The LSO can be an employee of a city or county or a private consulting or engineering firm.

Step 2: Obtain an applicable Wage Decision for the project.

A wage decision is a listing established by the DOL of different work classifications.

General wage decisions are categorized into four groups (Heavy, Highway, Building, and Residential Construction) and apply to specific geographic areas, usually a county or group of counties. Wage decisions are modified from time to time to keep them current.

The LSO must obtain the applicable wage decision from the DOL's website at www.wdol.gov. The applicable wage decision is to be included in the bid document. The LSO must complete the *Wage Rate Issuance Notice* and retain a copy in the contract file. The date the wage rates were issued must be recorded on the *Labor Standards Record*.



CHAPTER 6

DAVIS-BACON ACT/LABOR STANDARDS

WAGE RATE CLASSIFICATIONS

Please note that the descriptions and illustrations are guides. The advertised and contract specifications should identify as specifically as possible the segments of work to which the schedules will apply.

HIGHWAY CONSTRUCTION -- Highway projects include the construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects not incidental to building or heavy construction.

BUILDING CONSTRUCTION -- The construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. It includes all construction such as structures, residential structures greater than four stories, the installation of utilities and the installation of equipment, both above and below grade level, as well as incidental grading, utilities and paving. Additionally, such structures need not be "habitable" to be building construction. The installation of heavy machinery and/or equipment does not generally change the project's character as a building.

RESIDENTIAL CONSTRUCTION -- Residential projects for Davis-Bacon purposes are those involving the construction, alteration, or repair of single family houses or apartment buildings of no more than four stories in height. This includes all incidental items such as site work, parking areas, utilities, streets and sidewalks.

HEAVY CONSTRUCTION -- Heavy projects are those projects that are not properly classified as either building, highway or residential. Unlike these classifications, heavy construction is not a consistent classification. Because of this catch-all nature, projects within the heavy classification may sometimes be distinguished on the basis of their particular project characteristics, and separate schedules issued.

Step 3: Include the wage decision (and any modifications) in the bid documents.

Step 4: Ensure that the wage decision is current ten days before bid opening.

The LSO must confirm that the wage decision in the bid specifications is still current for the bid opening date.

- The LSO must confirm the wage decision within ten days of the bid opening, and again the day of the bid opening by checking the DOL's website www.wdol.gov. This is referred to as the Ten-Day Call. In addition to verifying that the wage decision is still current, it must also provide at least seven calendar days before the bid opening to allow for any addendum to the bid package if the Wage Rates were modified.
- A completed *Ten Day Confirmation* and a copy of the current wage decision must be retained in the local files with other labor standards documentation.



CHAPTER 6

DAVIS-BACON ACT/LABOR STANDARDS

- The date the wage rates were confirmed must be recorded on the *Labor Standards Record*.
- If wage rates were modified between the *Ten Day Confirmation* date and the bid opening date, the LSO must contact bidders regarding the change and documentation of the contact (email, fax, mail, etc.) must be included in the local files. If all potential bidders cannot be contacted prior to the bid opening, please contact the GLO-DR Division Labor Standards Specialist for technical assistance and include documentation of the resolution in the local file.

Step 5: Check the proposed prime construction contractor for eligibility status.

The LSO must verify prior to executing the construction contract that all prime contractors (and subsequently, their subcontractors) that are anticipated to be awarded the construction contract are not listed as “debarred” by the Excluded Parties List System (“EPLS”) using www.eppls.gov. Verification from the EPLS website must be in the local files.

Step 6: Award the construction contract.

The recipient must include appropriate labor standards provisions and the wage determination in the construction contract. Each contract subject to Davis-Bacon labor standards requirements must include contract provisions containing labor standards clauses and a Davis-Bacon wage decision. These documents are normally bound into the contract specifications.

The labor standards clauses describe the responsibilities of the construction contractor concerning Davis-Bacon wages and obligate the construction contractor to comply with the labor requirements. The labor standards clauses also provide for remedies in the event of violations, including withholding payments due to the construction contractor to ensure the payment of wages or liquidated damages which may be found due. These contract clauses (see checklist below) enable the LSO to enforce the Federal labor standards applicable to the project.



CHAPTER 6

DAVIS-BACON ACT/LABOR STANDARDS

CHECKLIST OF CONTRACT PROVISIONS

(To be included in the Contract)

- Activity
- General Contract Conditions, Part I, including:
 - Certification of Compliance with Clean Air and Water Acts (Contracts in excess of \$100,000).
 - Equal Employment Opportunity provisions (Executive Order 11246 compliance); if employer has 15 or more employees and/or bid/contract is over \$10,000.
 - Section 504 non-discrimination clause for handicapped persons regarding project benefits and employment; if employer has 15 or more employees.
 - Section 3 compliance (local labor/businesses) (if construction project exceeds \$100,000).
 - Section 109 clause (non-discrimination); if employer has 15 or more employees.
 - Lead-Based Paint Hazards-conditions.
- General Contract Conditions, Part II, including:
 - Federal Labor Standards Provisions (if construction project exceeds \$2,000).
 - Insertion of appropriate Prevailing Wage Rate Determination(s) (if construction project exceeds \$2,000).
- General Specifications, Part III, Special Conditions (including a minimum of 5% retainage until project completion/final inspection).
- General Specifications Schedule, to have a State-registered architect or engineers' seal affixed to same (if applicable). Not necessary for repair and demolition contracts.
- Certifications, to include the following:
 - Certificate of Owner's Attorney.
 - Bidder's Certification Regarding Equal Employment Opportunity (if bid equals or exceeds \$10,000).
 - Contractor's (Bidder's) Certification Concerning Labor Standards and Prevailing Wage Requirements (if construction exceeds \$2,000).
 - Section 3/Prohibition of Segregated Facilities Certification (if bid equals or exceeds \$100,000).

The wage decision included in the construction contract is "locked-in" once the contract is awarded - no future modifications are applicable to the contract or project involved - unless the construction contract is not awarded within 180 days.



CHAPTER 6

DAVIS-BACON ACT/LABOR STANDARDS

A retainage of 10% is recommended on most contracts: 5% to ensure that the performance and quality of work being performed is satisfactory and 5% to ensure compliance with labor standards.

Additional Classification and Wage Rate: On occasion, the applicable Davis-Bacon wage decision does not contain all of the work classifications and wage rates needed to complete the construction work. The LSO may request an additional classification in writing through the *Request for Additional Classification and Rate*.

The GLO-DR Division Labor Standards Specialist will review the requested classification and wage rate to determine whether the request meets DOL requirements.

Step 7: Hold a preconstruction conference to explain labor standards.

A preconstruction conference must be held with the engineer/architect, prime contractor, subcontractor(s), inspector(s), labor standards officer, and all applicable utility companies prior to the start of construction. During this conference, all parties should be advised of their responsibilities and obligations on a federally funded or federally assisted project. The applicable federal, state, local, and program guidelines should also be discussed.

The recipient must document and retain preconstruction conference minutes, including a list of attendees and an outline of the required federal/state labor requirements. The preconstruction conference should include:

- Discussion of all construction details, time frame of project, payment requirements, insurance and bonding requirements, and labor standards;
- Delivery of all bonds and certificates of insurance to the recipient; and
- Delivery of all necessary General Wage Decisions, labor posters, and any additional classifications to the contractor along with instructions that will assist in completing the project.

Step 8: Submit the Labor Standards Record.

The LSO must submit a *Labor Standards Record* on each construction contract over the amount of \$2,000 for the GLO-DR project.

- A separate record must be submitted for each prime contractor and should reflect all subcontractors listed under that prime.
- The *Labor Standards Record* must be submitted after the preconstruction conference is held and before any construction dollars are reimbursed from the GLO-DR contract for the construction contract.
- Submit the *Labor Standards Record* by email to TxDRLabor@HNTB.com.

Step 9: Review project payrolls during construction.



CHAPTER 6

DAVIS-BACON ACT/LABOR STANDARDS

The LSO or other designated inspector must conduct an on-site visit to the project and interview some of the workers concerning their employment on the project. In addition, the LSO must periodically review payrolls and related submissions to ensure that the labor standards requirements have been met.

On-site Interviews: Every employer (contractor, subcontractor, etc.) must make their employees available for interview at the job site with the LSO, a GLO-DR representative, HUD representative, or DOL representative. Every effort must be made to interview up to 10% of employees in all trades for each building contractor or subcontractor.

- Interview information must be recorded on the *Record of Employee Interview* or HUD – FORM 11 available at:
www.hud.gov/offices/adm/hudclips/forms/files/11.doc.

Project payroll reviews: A weekly certified payroll report for all prime and subcontractors must be completed and kept in the local contract files, beginning with the first week in which construction begins on the project and for every week after until the work is complete (unless construction is suspended with documentation). The LSO must review the payroll submissions to ensure that compliance with all DBRA.

Step 10: Submit construction completion reports.

Upon completion of the construction contract, a final inspection must be conducted and all parties must agree that the work is acceptable.

- Non-housing - A *Final Wage Compliance Report* ("FWCR") signed by the LSO is required for each construction contract subject to Davis-Bacon.
- Housing - FWCR must be received and approved prior to reimbursement of the final draw for each prime construction contract and the final engineering draw.

A *Final Bills Paid Affidavit by the Contractor* in order to receive final payment. The building contractor must complete an affidavit that affirms each person who worked on or provided materials for the project has been paid in full.

- *Final Lien Waiver Affidavit by Contractor* is authorized under Texas Property Code Section 53.085. This notarized form documents receipt of final payment by the building contractor and provides a sworn waiver and indemnity for all claims made against the homeowner in the form of mechanics' or materialmen's liens.

6.1.3 Restitution for Underpayment of Wages.

Where underpayments of wages have occurred, the employer will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions.



CHAPTER 6

DAVIS-BACON ACT/LABOR STANDARDS

Notification to the Prime Contractor: The LSO must notify the prime contractor in writing of any underpayments found during payroll or other reviews. The prime contractor is allowed 30 days to correct the underpayments.

6.1.4 Labor Disputes

Disputes can occur in enforcing compliance of Davis-Bacon wage requirements. In the context of Davis-Bacon disputes are most often between the LSO and one or more employers (the prime contractor and/or a subcontractor) about whether and to what extent violations have occurred.

The prime contractor is responsible and will be held liable for any wage restitution that is due to any worker employed in the construction of the project, including workers employed by subcontractors and any lower-tier subcontractors.

6.1.5 Recordkeeping Requirements

The recipient must maintain a file with the following documentation for each construction contract:

- Additional Classification request(s)*;
- Labor Standards Record*;
- Certificate(s) of Construction Completion*;
- Final Wage Compliance Report(s)*;
- Change orders, as applicable*;
- Financial Interest Form for each construction contractor and subcontractor*;
- Reports of wage violations (amount of restitution, number of hours and days)*;
- Actual Advertisements for Bids (either full page or with publisher's affidavits) or evidence of quotes/estimates received (for small purchase procurement);
- Bid Document(s) with Labor Standards Provisions included;
- Contract Document(s) with Labor Standards Provisions included;
- Bids Received;
- Bid Tabulation Sheet(s);
- Contractor Eligibility Verification printout(s) (for each prime and/or subcontractor);
- Pre-construction conference minutes and sign-in sheet(s);
- Start of Construction Notice(s);
- Payrolls, with evidence of compliance review;
- Employee interviews;



CHAPTER 6

DAVIS-BACON ACT/LABOR STANDARDS

- Interim inspection reports;
- As-built Plans;
- Appointment of Labor Standards Officer;
- Copy of Wage Rate Issuance(s); and
- Ten-Day Confirmation Forms.

***Must be submitted to the GLO-DR Division.**

DOL Regulations are available on-line:

<http://www.dol.gov/dol/esa/public/regs/cfr/whdcfr.htm>.

6.2 *Housing Specific Requirements*

The DBRA, the CWHSSA, and the Copeland "Anti-Kickback" Act apply to projects being assisted with CDBG DR Program funds if a building contractor is performing work on a single structure which houses eight or more households. A building contractor performing work on eight or more individual, separate structures for eight or more individual, separate households is not subject to DBRA. The FLSA (which establishes the minimum wage for all workers) will be applicable in most cases, whether or not DBRA, CWHSSA, and/or the Copeland Act apply.

6.3 *Non-Housing Specific Requirements*

There are no other requirements that are specific to Non-Housing only.



CHAPTER 7

FORCE ACCOUNT LABOR

FORCE ACCOUNT LABOR

7.1	General Requirements (Housing and Non-Housing)	92
7.1.1	Allowable Force Account Costs	92
7.1.2	Wages.....	92
7.1.3	Equipment Costs	93
7.1.4	Expendable Personal Property Costs	95
7.1.5	Force Account Recordkeeping.....	96
7.2	Housing Specific Requirements	97
7.3	Non-Housing Specific Requirements	97



CHAPTER 7

FORCE ACCOUNT LABOR

FORCE ACCOUNT LABOR

Definition of Force Account: Professional services, construction, rehabilitation, repair or demolition that is performed by the following municipal, COG or county employees.

- Permanent employees of a recipient;
- Temporary employees of a recipient hired, not contracted, to specifically perform work on a federally funded or federally assisted construction project - the recipient must adhere to its hiring and employment policies for temporary employees;
- Employees of a county who are carrying out public facilities improvements for a recipient through an intergovernmental agreement as prescribed by the Texas Government Code, Interlocal Cooperation Contract, Chapter 791; or
- Employees of a public utility district or utility company on a case-by-case basis.

When using local staff, the local governing body must assure the following:

- The recipient has written personnel and employment policies that include specifically prohibited discriminatory practices;
- Conflict of Interest provisions are in place and enforced;
- EEO guidelines are followed in advertising for new employees; and
- All provisions are in compliance with Fair Labor Standards.



CHAPTER 7

FORCE ACCOUNT LABOR

7.1 *General Requirements (Housing and Non-Housing)*

The box below provides the information needed to change from contract construction work to force account.

Request to Change from Contract Construction Work to Force Account

If a grantee did not include force account in its GLO-DR application for funding but circumstances arise that could best be handled by force account, the grantee must receive approval to change construction methods from the GLO-DR program by submitting a letter with the following information:

1. Description of the construction activities to be completed by force account;
2. Justification for doing the work by force account;
3. Details of grantee's experience with projects of like or similar nature;
4. Information on workload as it may affect capacity to do the work within time frame or work schedule;
5. A complete estimated cost breakdown showing:
 - a) The number of work hours and cost per hour for each category of labor, and
 - b) A list of non-salary costs such as materials, supplies, equipment owned by the grantee, equipment that must be rented, etc;
6. Certification that personnel that will perform the work are employees of the grantee, a city/county, a public utility district, or a utility company - if temporary workers are hired, certification that the employer's policies for temporary employees will be followed; and
7. List of names and qualifications of personnel performing specialized work, such as inspection, testing, electrical work, etc. as applicable.

7.1.1 *Allowable Force Account Costs*

The OMB Circular A-87 establishes cost standards for federally-funded or federally-assisted projects. Only actual expenditures incurred by the recipients as a result of the GLO-DR project are considered allowable costs. This applies whether these costs are being reimbursed with GLO-DR funds or used to document all or part of the recipient's required match. These costs can include labor, materials, equipment, and professional services.

7.1.2 *Wages*

Reasonable wages, which are paid by the recipient for work performed on the GLO-DR project, either as a local contribution or reimbursement, must be supported by adequate documentation. This documentation includes personnel cost calculation forms, time sheets, and payroll records. Compensation is considered reasonable when it is comparable to wages that are paid for similar work in other areas of that



CHAPTER 7

FORCE ACCOUNT LABOR

same government entity. When comparable work is not found within that entity, a salary survey should be conducted.

NOTE: Salaries and expenses of elected officials (mayor, county judge, city council, or county commissioners) of a political subdivision are considered a cost of local government and are NOT allowable grant costs.

A *Personnel Cost Calculation Sheet* must be completed for each employee to determine the allowable hourly rate charged on GLO-DR force account projects or to document match. The form need only be submitted once for each employee, unless the employee's wages change during the course of the project.

Overtime Wages: Overtime costs incurred by the recipient for employees that work more than 40 total hours per week, including work on a GLO-DR project, are eligible costs. The recipient must complete a second *Personnel Cost Calculation Sheet* for each employee to determine an hourly rate for overtime in accordance with local employment policies and DOL regulations. Health insurance and other fixed cost benefits should NOT be increased on the overtime calculation; however any benefits paid by the employer based on wages may be adjusted for the overtime rate.

Personnel timesheets should clearly show the hours worked and duties performed for the GLO-DR project and all other projects.

Fringe Benefits: Allowable fringe benefits, if applicable, must be provided under a locally approved plan or policy and may be reimbursed in proportion to the amount of the employee's time spent on GLO-DR activities. Allowable fringe benefits may include the following compensation or contributions made by the recipient: vacation, holidays, sick leave, social security, life/health insurance, unemployment insurance, worker's compensation, and retirement. These benefits are reflected on the *Personnel Cost Calculation Sheet*.

Donation or Volunteer Work: Donation/volunteer work may be counted towards local contribution if the service is an integral and necessary part of the recipient's GLO-DR project. See Chapter 3, Financial Management, for information on documenting donated work as a local contribution funds.

Material Costs: All materials used in the construction of the project are eligible expenses. However, all materials must be procured according to the procedures described in Chapter 4, Procurement Procedures.

7.1.3 *Equipment Costs*

Equipment is defined as tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. Where procurement of materials will exceed \$100,000, the items must be purchased through competitive sealed bids. Items that are identified in Table 2 of the GLO-DR application and installed as part of the GLO-DR activity, such as well



CHAPTER 7

FORCE ACCOUNT LABOR

pumps or Supervisory Control and Data Acquisition ("SCADA") systems, are considered materials and not treated as equipment under this section.

Equipment purchases with grant funds will not be allowed under the GLO-DR Program.

Charging for Equipment Use: Recipients may be compensated for the use of equipment on GLO-DR projects, including construction equipment. An *Equipment Cost Calculation Sheet* must be submitted for each piece of equipment for which the recipient requests reimbursement. This form documents the maximum hourly rate that will be charged for use of the equipment as well as the original acquisition cost of equipment owned by the recipient.

For all methods of charging for equipment, "in use" means that the equipment is in actual operation performing eligible work. Standby equipment costs are not eligible.

The hours charged for equipment use must agree with the corresponding hours documented for the equipment operator.

FEMA Equipment Rates: The GLO-DR program will generally allow recipients to use FEMA equipment rates for providing compensation for the use of equipment currently owned by the recipient up to a total of 50% of the acquisition cost of the equipment as documented through the original purchase invoice or other approved documentation. The GLO-DR program will only reimburse for actual hours of construction time at the project site. All reimbursement requests must document this construction time.

Rates on the FEMA Schedule of Equipment Rates:

- Are for equipment in good mechanical condition, complete with all required attachments;
- Include all eligible costs of ownership and operation of equipment, including depreciation, overhead, all maintenance, field repairs, fuel, lubricants, tires, Occupational Safety and Health Administration ("OSHA") equipment and other costs incident to operation (Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121);
- Do not include the labor costs of the equipment operator;
- Are based on hours of use; and
- Except that vehicles used to transport people (work crew, engineer, or other city personnel authorized to document progress for drawdown requests) must be based on mileage using the FEMA rate per mile. If the recipient requests reimbursement for a passenger vehicle based on a FEMA hourly rate rather than the rate per mile, documentation must be provided that the vehicle was used for eligible purposes other than transporting people.



CHAPTER 7

FORCE ACCOUNT LABOR

Fuel and maintenance costs are included in the FEMA rate and are not eligible for separate reimbursement.

Labor costs should be charged separately.

Depreciation: Recipients may be compensated for the use of equipment they own by using a generally accepted method of computing depreciation. The OMB provides guidance on charging for depreciation. The depreciated use allowance for equipment will be computed at an annual rate not exceeding 6 2/3% of the acquisition cost. The recipient must maintain adequate property records and consistently apply the method of computing depreciation throughout its jurisdiction. Depreciation is not allowed on equipment that is considered fully depreciated or in conjunction with use allowances for the same piece of equipment.

Lease/Purchase Agreement: The recipient must obtain written authorization from the GLO-DR program before entering into a lease/purchase agreement. If a recipient enters into a lease/purchase agreement for equipment that will be used on a GLO-DR contract, the GLO-DR program will consider the equipment to be owned by the recipient for the purposes of charging equipment usage. The GLO-DR program will pay for the time the equipment is in use on the GLO-DR project using either the depreciation method or the FEMA rate method described above. Under no circumstances will an interest payment on a lease/purchase agreement be paid with GLO-DR funds.

Rental Cost Reimbursement: The GLO-DR program will pay for the time that rented equipment is in use on the GLO-DR project using the lower of the following hourly rates:

- FEMA rates; or
- Actual rental cost divided by a 40 hour work week, plus fuel costs.

Total costs for rented equipment may not exceed the FEMA rates authorized for that equipment.

7.1.4 Expendable Personal Property Costs

Expendable personal property is defined as property that has a useful life expectancy of less than one year and an acquisition cost of less than \$5,000 per unit. This can include a wide variety of items such as office supplies, drill bits, safety equipment, and hand tools. The purchase of expendable personal property is eligible provided all the following conditions have been met:

- The rental of the equipment is shown to be more expensive than its purchase;
- The use must be entirely dedicated to the GLO-DR project or its cost must be shared on a pro rata basis; and



CHAPTER 7

FORCE ACCOUNT LABOR

- The recipient must receive approval from the GLO-DR program before purchasing any personal property. Written justification must also be submitted by the recipient with the invoice at the time of reimbursement. Small office supplies are exempt; however, back-up documentation is still required.

Examples of Eligible and Ineligible Force Account Costs

Eligible

- Salary (per hour) of the Public Works Director supervising the force account work
- Mileage for a truck to transport the construction crew to the work site
- Purchase of a hand tool necessary to complete the project
- Purchase of paper and other office supplies necessary to administer the grant
- Drinking water provided to construction crews while performing force account work as a health and safety concern

Ineligible

- Salary of the County Commissioner supervising the force account work
- Mileage for a vehicle to transport the mayor to check progress on the project
- Purchase of a tool that is not necessary for the project, or that is very similar to tools already owned by the grantee
- Purchase of office supplies to be used for other activities of the grantee
- Lunch provided to construction crews on break

7.1.5 Force Account Recordkeeping

The recipient must maintain thorough documentation of all costs whether these costs are being reimbursed with GLO-DR funds or used to document all or part of the recipient's local contribution and all costs must apply to a particular line item of the GLO-DR contract budget. This documentation must include:

- Employee personnel policies that delineate paid leave, overtime, equal employment, travel, and terms of employment policies, compliance with the FLSA, and Section 504. If temporary workers are hired to complete the project, the employee personnel policies must address temporary employees.
- A *Personnel Cost Calculation Sheet* to determine the hourly cost for each employee must be approved and signed by the employee's supervisor or other personnel authorized by the recipient.
- An *Administrative Personnel Time Sheet* should be completed for Project Delivery staff and a *Construction Personnel Time Sheet* should be completed for all construction activity. A *Multiple GLO-DR Contracts Personnel Time Sheet* may be used by recipients with several GLO-DR projects in progress at



CHAPTER 7

FORCE ACCOUNT LABOR

once. The forms must be approved and signed by the employee's supervisor or other personnel authorized by the recipient and should correspond to the recipient's regular employee time sheets to the extent that no one should be charged to the project if they are not in attendance.

- An *Equipment Cost Calculation Sheet* to determine the hourly cost for each piece of equipment must be approved and signed by personnel authorized by the recipient.
- A *Construction Personnel Time Sheet* documenting the use of the equipment and operator. Hourly costs may be based on FEMA equipment rates, depreciation, or rental cost as described in this chapter. Leased equipment must be supported by a copy of the lease agreement and a calculation of the hourly rental cost, including fuel, compared to the FEMA rate for the equipment.

Purchase vouchers, invoices, and canceled checks for all construction materials and other supplies. If the recipient uses materials already on hand, rather than purchasing materials specifically for the project, reimbursement will be based on the actual cost of the material at the time of purchase.

Documentation required for each Request for Payment

All requests for payment that include force account costs must include:

- A *Force Account Request for Payment Worksheet* signed by the recipient, project engineer, and administrator;
- A map of the project area that clearly identifies the areas where work has been completed, the areas where work is included in the current request for payment, and the areas where work will be performed in the future; and
- Adequate back-up documentation (invoices, time sheets) to support the requested amount.

Upon completion of the construction, a *Certificate of Construction Completion for Force Account* must be submitted to the GLO-DR program.

7.2 Housing Specific Requirements

There are no other requirements that are specific to Housing only.

7.3 Non-Housing Specific Requirements

There are no other requirements that are specific to Non-Housing only.



CHAPTER 8

Vendor Services - Grant Administration, Environmental, and Engineering

VENDOR SERVICES – GRANT ADMINISTRATION, ENVIRONMENTAL, AND ENGINEERING

Business models and processes utilized by the GLO-DR for the procurement of professional services providers, including Engineers, Environmental Service Providers (“ESPs”) and Grant Administrator firms has varied for different funding allocations. Therefore, such firms and the Grantees they serve must familiarize themselves with the Action Plans, Application guidance and individual contract language for vendor processes applicable to the specific funding allocation that affects them.

Any vendor services procured directly must follow guidance provided in the “Procurement” chapter of this manual.

All Grant Administrators and Environmental and Engineering Service Providers must submit a monthly Historically Underutilized Business (“HUB”) Subcontracting Plan to document HUB compliance.



CHAPTER 9

CONTRACT AMENDMENTS

CONTRACT AMENDMENTS

9.1	General Amendment Requests.....	100
9.2	Performance Statement Changes	101
9.3	Budget Changes	101
9.3.1	Budget Amendment	102
9.4	Implementation Schedule Extensions	102
9.5	Change Orders	103
9.6	Housing Specific Requirements	104
9.7	Non-Housing Specific Requirements	104



CHAPTER 9

CONTRACT AMENDMENTS

Contract Amendments

9.1 General Amendment Requests

Adequate documentation and justification is required for all contract amendments. If the Grantee fails to submit any of the required documentation described below, the amendment will be placed "On-Hold" and will not be processed until all documentation is received.

The following items are required from the grantee for ALL amendment requests:

- Cover letter signed by the chief local elected official (or other local official authorized by resolution to represent the grantee for DR matters) describing the proposed changes and the reason(s) for the changes;
- Letter of re-evaluation of environmental findings;
- Revised Performance Statement & Implementation Schedule (Attachment A), using "track changes" or similar format to indicate all added, deleted, or changed text;
- *Budget Change Form*, as applicable; and
- **All requests must include the impacts to scope, schedule, and fee. For example, a grantee may not submit a request to change the Performance Statement without including the impact to the Budget, such as an increase in the Engineering fee, and the impact to the Implementation schedule, such as an extension to complete additional projects.**

Cover Letter Requirements Checklist:

- Description of how new activities are related to Hurricanes Dolly or Ike;
- A detailed description of the new, deleted, or altered activities;
- An explanation of why the amendment is being proposed (i.e., what circumstances led to the necessity of the amendment);
- The effect of the changes on program beneficiaries, with particular attention to changes in both the number and percentage of low/moderate income beneficiaries;
- Any changes in resource leveraging (local and all other funds) including justification for these changes;
- Letter of re-evaluation of the Environmental Finding; and
- Any additional information specific to the type of request being proposed.



CHAPTER 9

CONTRACT AMENDMENTS

9.2 *Performance Statement Changes*

In addition to the items mentioned above, the following items are required from the grantee for all Performance Statement changes:

- Revised project maps showing the locations of the original and amended project activities if any change in the project location or target area is proposed;
- Updated Table 2 information as applicable; and
- Updated beneficiary information as applicable.

The grantee should evaluate the Performance Statement once a bid has been accepted, and submit a modification or an amendment request as appropriate to accurately reflect the project that will be awarded.

Once work has been added to the Performance Statement, the work may be completed by various methods, including:

- Bid alternate item;
- Change Order;
- Bid the additional work separately; or
- Force account labor, material, and/or equipment. Keep in mind that extensive documentation is required in order to use force account resources.

Note: While changing from force account labor to bid/contract labor ordinarily does not trigger a Performance Statement Amendment, the grantee must request and receive prevailing wage rates before advertising for bids. The reverse change --from bid/contract to force account labor-- should be submitted to the GLO-DR in writing for review and approval as required in Chapter 7, Force Account Labor.

Each request for a Performance Statement change will be reviewed by GLO-DR to determine whether the proposed changes require an amendment or other type of contract change and that requested changes continue to meet a national objective and other program requirements. All proposed changes are subject to potential additional Environmental Review pending re-evaluation of the requested changes.

9.3 *Budget Changes*

A grantee may transfer GLO-DR funds between budget categories in order to reflect the actual costs of the project. Grantees should be sure that revised budget figures are reflected on all subsequent GLO-DR *Request for Payment Forms*.



CHAPTER 9

CONTRACT AMENDMENTS

If the changes to the Budget will also require a change to the DR contract Performance Statement, or a change order to the construction contract, these items should be submitted with the request.

NOTE: All requests to move GLO-DR funds especially from construction activities to professional services **must** be supported with adequate justification, including a detailed proposal from the professional service provider.

9.3.1 *Budget Amendment*

A contract budget amendment is necessary whenever the total transfer of contract funds between budget categories is greater than 10% of the contract amount within a single request, or greater than 25% cumulative of all prior requests. The changes will be made to the Budget (Attachment B).

The following items are required from the Grantee for a budget amendment:

- A letter signed by the chief local elected official describing the proposed change, explaining the reasons for transfer of funds and impact of the changes on the original scope of work;
- The *Contract Budget Change Form*;
- A detailed proposal from the Engineer with an hourly cost breakdown, if the Engineer is requesting a fee increase; and
- Updated Table 2 information, as applicable.

9.4 *Implementation Schedule Extensions*

If a grantee is reasonably assured that project costs will be incurred beyond the contract or construction end date and that incurring these costs is beyond the control of the grantee, an amendment must be requested from the DR Division to extend the original contract Implementation Schedule (Attachment A). Extension requests must be submitted at least 60 days prior to the construction end date outlined in the Implementation Schedule.

Extensions will only be granted:

- For extenuating circumstances beyond the control of the grantee;
- For emergency work related to the DR project, considered on a case-by-case basis; or
- To complete additional approved projects using residual contract funds.



CHAPTER 9

CONTRACT AMENDMENTS

The following items are required from the Grantee for a contract extension:

- A letter, signed by the chief local elected official, requesting the extension and outlining the extenuating or compelling circumstances beyond the control of the grantee, which led to the need for a contract extension.
- A revised timeline schedule (Attachment A) showing how the grantee plans to complete the project within the proposed period.

In addition, an extension is not necessary in the following cases:

- Completion of a required Single Audit, and/or reimbursement for audit expense, and final administration costs (must be reserved on the *Project Completion Report*); and
- Reimbursement of project costs incurred during the contract period, (reimbursement must be requested within 90 days following the contract end date).

NOTE: If funds have been approved for an extended reserve period due to litigation or other situations and if additional costs must be incurred after the contract end date to resolve the situation, an extension may be necessary to include those additional costs in the GLO-DR contract.

9.5 Change Orders

When a change order is necessary, which would result in a change to the GLO-DR contract, the grantee should request an adjustment to both the GLO-DR contract and the grantee construction contract.

A Change Order is a change to the *construction contract only*. A *Construction Contract Change Order Form* should be submitted to the GLO-DR **prior** to fully executing the change order. The GLO-DR program reviews all Change Orders on DR projects to ensure that all costs are eligible and procured according to DR requirements described in Section 4.2.5, including:

- Sufficient grant or local funds are available to meet any increased costs;
- The original contract price has not been increased by more than 25% or decreased (without the consent of the contractor) by more than 25% for municipalities and 18% for counties;
- All items listed on the Change Order were competitively procured through the original bid or the GLO-DR Division has approved an exception; and
- All items listed on the Change Order comply with the GLO-DR contract, including the Performance Statement, Implementation Schedule, Budget, and environmental review requirements.



CHAPTER 9

CONTRACT AMENDMENTS

9.6 *Housing Specific Requirements*

There are no other requirements that are specific to Housing only.

9.7 *Non-Housing Specific Requirements*

There are no other requirements that are specific to Non-Housing only.



CHAPTER 10

CIVIL RIGHTS REQUIREMENTS

CIVIL RIGHTS REQUIREMENTS

10.1	General Requirements (Housing and Non-Housing)	106
10.1.1	Equal Opportunity and Non-Discrimination	106
10.1.2	Inclusion of Equal Employment Opportunity ("EEO") Provisions in Construction Contracts	107
10.1.3	Compliance with Section 3 Requirements	109
10.1.4	Participation by Small, Minority, and Women-Owned Businesses	114
10.1.5	Excessive Force Policy	114
10.1.6	Section 504 Requirements.....	114
10.1.7	Furthering Fair Housing.....	116
10.1.8	Monitoring and Recordkeeping	119
10.1.9	Applicable Federal Laws	120
10.1.10	Equal Opportunity	120
10.1.11	Handicapped Accessibility.....	121
10.1.12	Employment and Contracting.....	122
10.1.13	Excessive Force	122
10.1.14	Fair Housing	123
10.1.15	Displacement/Relocation	123
10.2	Housing Specific Requirements.....	124
10.3	Non-Housing Specific Requirements	124



CHAPTER 10

CIVIL RIGHTS REQUIREMENTS

CIVIL RIGHTS REQUIREMENTS

All recipients of CDBG-DR funds are required to comply with the Civil Rights requirements of Title I of the Housing and Community Development Act and the Fair Housing Law. Recipients must demonstrate compliance with the following requirements contained in the Housing and Community Development Act.

- Affirmative steps to promote fair and equal access to housing must be taken, regardless of the type of grant.
- Equal opportunities must be afforded to all persons.
- No person shall be excluded or denied program benefits on the basis of race, color, religion, sex, national origin, age or disability.
- Minority and female-owned businesses must be informed of grant funded contracts. Affirmative steps must be taken to assure this.
- To the greatest extent feasible, Section 3 resident and business concerns should be given preference in employment, training, and contracting.

10.1 General Requirements (Housing and Non-Housing)

Recipients should establish a good recordkeeping system and continue work on Equal Opportunity/Fair Housing activities early at all times.

HUD requires that no person in the United States shall on the grounds of race, color, national origin, religion, sex, familial status, and/or physical and mental handicap be excluded, denied benefits or subjected to discrimination under any program funded in whole or in part by Federal GLO-DR funds.

Recipients are required by federal law to affirmatively further fair housing and to increase public awareness of the existence of fair housing laws, which prohibit discrimination in the sale, renting, and financing of housing.

10.1.1 Equal Opportunity and Non-discrimination

Recipients must take actions to ensure that no person or group is denied benefits such as employment, training, housing, and contracts generated by the local GLO-DR activity. As the project progresses, the recipient must:

- Monitor the extent to which protected groups are participating in and receiving benefits from the GLO-DR activity.
- Take necessary actions to ensure that members of the protected groups have equal access to any information, related services, job opportunities and training associated with the project. These actions are committed to in the Local Opportunity Plan discussed on the next page.



CHAPTER 10

CIVIL RIGHTS REQUIREMENTS

- Maintain records of final project beneficiaries by race, ethnicity, and sex and include this information in the *Project Completion Report*. See Chapter 11, Contract Closeout.
- Exercise non-discrimination in the decision-making process for all elements of a GLO-DR project.

10.1.2 Inclusion of Equal Employment Opportunity (“EEO”) Provisions in Construction Contracts

Recipients and subrecipients are required to include applicable equal opportunity provisions and certifications in the bid packages and contracts. These are included in the Sample Bid Package found in Chapter 4, Procurement Procedures. A list of guidelines for construction contractors regarding equal opportunity is included as *Equal Opportunity Guidelines for Construction Contractors (see below)*. These guidelines should be discussed with the construction contractor during the preconstruction conference.

Equal Opportunity Guidelines for Construction Contractors

1. What are the responsibilities of the offeror or bidder to insure equal employment opportunity?

The offeror or bidder must comply with the "Equal Opportunity Clause" and the "Standard Federal Equal Opportunity Construction Contract Specifications."

2. Are construction contractors required to insure a comfortable working environment for all employees?

Yes, it is the construction contractor's responsibility to provide an environment free of harassment, intimidation, and coercion to all employees and to notify all foremen and supervisors to carry out this obligation, with specific attention to minority or female individuals.

3. To alleviate developing separate facilities for men and women on all sites, can a construction contractor place all women employees on one site?

No, two or more women should be assigned to each site when possible.

4. Are construction contractors required to make special outreach efforts to Section 3 or minority and female recruitment sources?

Yes, construction contractors must establish a current list of Section 3, minority and female recruitment sources. Notification of employment opportunities, including the availability of on-the-job training and apprenticeship programs, should be given to these sources. The efforts of the construction contractors should be kept in file.



CHAPTER 10

CIVIL RIGHTS REQUIREMENTS

5. Should records be maintained on the number of Section 3 residents, minority and females applying for positions with construction contractors?

Yes, records must be maintained to include a current list of names, addresses and telephone numbers of all Section 3, minority and female applicants. The documentation should also include the results of the applications submitted.

6. What happens if a woman or minority is sent to the union by the Contractor and is not referred back to the Contractor for employment?

If the unions impede the construction contractor's responsibility to provide equal employment opportunity, a written notice should be submitted to TXCDBG.

7. What efforts are made by construction contractors to create entry-level positions for Section 3 residents, women and minorities?

Construction contractors are required to develop on-the-job training programs, or participate in training programs, especially those funded by the Department of Labor, to create positions for Section 3 residents, women and minorities and to meet employment needs.

8. Are any efforts made by the Contractor to publicize their Equal Employment Opportunity (EEO) policy?

Yes, the construction contractor is responsible for notifying unions and sources of training programs of their equal employment opportunity policy. Unions should be requested to cooperate in the effort of equal opportunity. The policy should be included in any appropriate manuals, or collective bargaining agreements. The construction contractor is encouraged to publicize the equal employment opportunity policy in the company newspaper and annual report. The Contractor is also responsible to include the EEO policy in all media advertisement.

9. Are any in-service training programs provided for staff to update the EEO policy?

At least annually a review of the EEO policy and the affirmative action obligations are required of all personnel employees of a decision-making status. A record of the meeting including date, time, location, persons present, subject matter discussed, and disposition of the subject matter should be maintained.

10. What recruitment efforts are made for Section 3 residents, minorities and women?

The construction contractor must notify, both orally and in writing, Section 3, minority and female recruitment sources one month prior to the date of acceptance for apprenticeship or other training programs.



CHAPTER 10

CIVIL RIGHTS REQUIREMENTS

11. Are any measures taken to encourage promotions for minorities and women?

Yes, an annual evaluation should be conducted for all minority and female personnel to encourage these employees to seek higher positions.

12. What efforts are taken to insure that personnel policies are in accordance with the EEO policy?

Personnel policies in regard to job practices, work assignments, etc. should be continually monitored to insure that the EEO policy is carried out.

13. Can women be excluded from utilizing any facilities available to men?

No, all facilities and company activities are non-segregated except for bathrooms or changing facilities to insure privacy.

14. What efforts are made to utilize minority and female contractors and suppliers?

None, however records are kept of all offers to minority and female construction contractors.

15. If a construction contractor participates in a business related association that does not comply with affirmative action standards, does that show his/her failure to comply?

No, the construction contractor is responsible for their own compliance.

16. Will a construction contractor be in violation of EEO policy and affirmative action if he sets up one set of goals to include minorities and women?

Yes. There is a separate goal for minorities and a separate single goal for women. The construction contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women both minority and non-minority.

17. Can a construction contractor hire a subcontractor who has been debarred from government contracts pursuant to EEO?

No. The construction contractor must suspend, terminate or cancel its contract with any Subcontractor who is in violation of the EEO policy.

18. What effort has been taken by the construction contractor to monitor all employment to insure the company EEO policy is being carried out?

The construction contractor must designate a responsible individual to keep accurate records of all employees that includes specific information required by the government.

10.1.3 Compliance with Section 3 Requirements

In accordance with Section 3 of the Housing and Urban Development Act of 1968, as amended, recipients using GLO-DR funding for housing or other public construction are required, to the greatest extent feasible, to provide training and



CHAPTER 10

CIVIL RIGHTS REQUIREMENTS

employment opportunities to lower income residents and contract opportunities to businesses in the project area.

Although recipients must comply with the State of Texas statutory requirements on competitive bidding, ("lowest and best bid"), the following steps should be taken regarding Section 3 compliance:

- Prepare and make available to the public a written Section 3 Policy.
- Take affirmative steps to follow the Section 3 Policy and document those efforts.
- Include the Section 3 Policy and *Equal Opportunity Guidelines for Construction Contractors* in any bid packets for contracts on GLO-DR projects. Notify all bidders that adherence to the Section 3 Policy will be required for contracts and sub-contracts in excess of \$100,000.

HUD Section 3 Goals

The following goals apply to GLO-DR contracts [see 24 CFR 135.30 and 24 CFR 570.487(d)]:

- 30% of the total number of new hires directly related to the GLO-DR-funded project should be Section 3 residents;
- 10% of the total dollar amount of all construction contracts directly related to the GLO-DR-funded project should be awarded to Section 3 business concerns; and
- 3% of the total dollar amount of all non-construction contracts directly related to the GLO-DR-funded project should be awarded to Section 3 business concerns.

Section 3 Residents:

- Residents of Public and Indian Housing; or
- Low- or very low-income persons that reside in the metropolitan area or nonmetropolitan county in which the GLO-DR funds are expended, or who identify themselves as Section 3 Residents.

Section 3 Business:

- Businesses that are 51% or more owned by Section 3 residents;
- Businesses whose permanent, full-time employees include persons, at least 30% of whom are currently Section 3 residents, or within three years of the date of first employment with the firm were Section 3 residents;



CHAPTER 10

CIVIL RIGHTS REQUIREMENTS

- Businesses that provide evidence of a commitment to subcontract in excess of 25% of the dollar amount of all subcontracts to be awarded to businesses that meet the qualifications described above; or
- Businesses located within the recipient's jurisdictions that identify themselves as Section 3 Business Concerns because they provide economic opportunities for low- and very low-income persons.

Recipient Section 3 Responsibilities

If new employment, training, or contracting opportunities are created during the expenditure of GLO-DR funding, the GLO-DR recipient (and their contractors or subcontractors, as applicable) must take the following actions "to the greatest extent feasible" in addition to compliance with State of Texas competitive bidding requirements and other related requirements:

1. Notify Section 3 Residents and Business Concerns in writing about training and employment opportunities generated by the GLO-DR-funded project;
2. Notify Section 3 Business Concerns in writing about the availability of contracting opportunities generated by the GLO-DR-funded project;
3. Notify potential contractors completing work on Section 3 covered projects of their responsibilities in writing;
4. Incorporate the Section 3 clause (see Section 3 clause on the following page) into all solicitations and contracts greater than \$100,000, as well as all subcontracts of those contracts;
5. Facilitate the training and employment of Section 3 Residents and the awarding of contracts to Section 3 Business Concerns;
6. Obtain Section 3 compliance reports from contractors and subcontractors as required;
7. Refrain from entering into contracts with contractors that are in violation with the Section 3 regulations (if the recipient has been notified of such violations);
8. Document actions taken to comply with Section 3; and
9. Report Section 3 information as described below.

Note: Requirements 1 and 2 may be satisfied by preparing, making available to the public, and following a Section 3 Policy. Requirement 3 may be satisfied by including the Grant Recipient's adopted Section 3 Policy in construction related bid packets and requiring bidders to certify as part of the bid response that a Contractor's Section 3 Policy will be submitted if they are awarded the contract.



CHAPTER 10

CIVIL RIGHTS REQUIREMENTS

§ 135.38 Section 3 Clause

All Section 3 covered contracts shall include the following clause (referred to as the Section 3 clause):

A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

F. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).



CHAPTER 10

CIVIL RIGHTS REQUIREMENTS

If no new employment, training, or contracting opportunities are created during the expenditure of GLO-DR funding, the recipient must still report Section 3 information, as described below, to confirm that Section 3 has not been triggered.

Contractor Section 3 Responsibilities

If a recipient executes a contract with a contractor that exceeds \$100,000, Section 3 goals and reporting also apply to that contractor.

- The contractor must report all new employment, contracting, and training opportunities directly related to the GLO-DR-funded project to the recipient using the *Prime Contractor* Form or similar format.

If a subcontract exceeds \$100,000, the subcontractor must report to the prime contractor all new employment, contracting, or training opportunities directly related to the GLO-DR-funded project; the prime must include the subcontractor's information in its report to the recipient.

Section 3 Reporting

The recipient must report Section 3 compliance in two ways:

- The *Financial Interest Report* - Indicates each company's status as a Section 3 Business Concern and identifies contracts greater than \$100,000 subject to Section 3 requirements.
- The *Section 3 Annual Report* - Indicates Section 3 compliance for the calendar year. Contracting and employment opportunities reported on the *Section 3 Annual Report* include:
 - Opportunities created by the recipient and all contractors or subcontractors with contracts that exceed \$100,000; and
 - Persons hired and contracts executed during the calendar year only (NOT cumulative); opportunities reported for one year may not be repeated for the following year's report.

The *Section 3 Annual Report* **must** be submitted as an attachment to the *Quarterly Progress Report* for the 4th quarter of each year the contract is open (no later than January 20th), and the *Project Completion Report*.

The recipient will be considered in compliance with Section 3 requirements, absent evidence to the contrary, if:

- The recipient reports on the Section 3 Annual Report that it has met the minimum numerical goals above; or
- The recipient provides evidence that an appropriate Section 3 Plan was adopted and implemented, regardless of the actual percentage of employment, training, and contracting opportunities secured by Section 3



CHAPTER 10

CIVIL RIGHTS REQUIREMENTS

Residents or Business Concerns as reported on the Section 3 Annual Report. If the numerical goals were not met, this evidence must include an explanation of the reasons the goals were not met.

10.1.4 Participation by Small, Minority, and Women-Owned Businesses

Recipients are encouraged to affirmatively take action to utilize Small Business Exchange ("SBE"), MBE and Women-Owned Businesses ("WBE") whenever possible. Although recipients are not directly responsible for meeting a specific minority business participation goal, GLO-DR reports to HUD on the levels of MBE and WBE hiring under all GLO-DR contracts.

Note: Payment of bond premiums on behalf of such firms is an allowable expenditure that can be paid for with GLO-DR funds only out of the general planning and project delivery budget category.

Throughout the contract period, all recipients are required to submit data on their rates of contracting with Section 3 small, women, and minority owned businesses. MBE and Section 3 information is reported on the *Financial Interest Report*.

MBE reports should include contracts and subcontracts for material, construction and any other major contracts awarded. Any contract or subcontract under \$2,000 does not have to be included in this report. When reporting subcontract amounts, the prime contract should be reduced accordingly to avoid duplication in reporting of construction contract dollars. The *Project Completion Report* requires all contracts previously reported to be listed cumulatively with their final contract amounts.

10.1.5 Excessive Force Policy

When recipients sign their contracts, they certify that they will pass and enforce the following policies:

- A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and/or
- A policy of enforcing applicable State and local laws against physically barring entrance to or exit from, a facility or location that is the subject of such non-violent civil rights demonstrations within its jurisdiction.

10.1.6 Section 504 Requirements

Section 504 of the Rehabilitation Act of 1973 prohibits discrimination in federally assisted programs on the basis of handicap. Section 504 imposes requirements to ensure that "qualified individuals with handicaps" have access to programs and



CHAPTER 10

CIVIL RIGHTS REQUIREMENTS

activities that receive federal funds. Recipients must adhere to the following procedures.

Exception:

Title II of the Americans with Disabilities Act and Section 504 do not require that action be taken which would change the fundamental nature of the program, or create undue financial and administrative burdens; however, the COG must make as much accommodation as possible up to the point of incurring undue burdens or changing the nature of the program.

Communication: Recipients should furnish appropriate auxiliary aids where necessary to allow an individual with handicaps an equal opportunity to participate in all GLO-DR program activities. Recipients should implement procedures that allow individuals with handicaps to obtain information concerning the existence and location of accessible services, activities and facilities. Such procedures must ensure, to the maximum extent possible, that individuals with handicaps receive the benefits and services of the program or activity receiving GLO-DR assistance. Examples of auxiliary aids include telecommunication devices for the deaf ("TDD"), the Texas Relay System (where a TDD is not feasible), audio visual presentations, interpreters, large-lettered notices, and posting notices at a level readable by individuals in wheelchairs.

Using the Texas Relay System: For telephone communications between hearing persons and TDD users, call these numbers for 24-hour service:

If you have a TDD: 1-800-735-2989

If you do not have a TDD: 1-800-735-2988

Designation of Responsible Employee: Any recipient that employs 15 or more persons must designate at least one person to coordinate its Section 504 responsibilities. This designation must be kept on file at the offices of the recipient. Even if a recipient uses a consultant to administer its program, it is highly recommended that a local staff person be the responsible designee.

Adoption of Grievance Procedures: Any recipient that employs 15 or more employees must adopt grievance procedures that incorporate due process standards and allow for quick and prompt resolution of complaints alleging any action prohibited by Section 504. Grievance procedures are not required to cover either applicants for employment or applicants for housing.

Notices: Any recipient that employs 15 or more persons must notify all participants, applicants and employees, unions, or professional organizations holding collective bargaining or professional agreements with the recipient that they do not discriminate on the basis of handicap in violation of Section 504.

Any such notice must identify the individual designated to coordinate its Section 504 compliance and must state, where appropriate, that the recipient does not



CHAPTER 10

CIVIL RIGHTS REQUIREMENTS

discriminate in admission or access to, or treatment or employment in, its federally assisted programs. Recipients are required to publish this notice in a newspaper of general circulation in their community and have evidence of this publication available for monitoring review (i.e., full-page advertisement or tear sheet with publisher's affidavit).

The notification process can include the posting of notices, publication of notices, and inclusion in other written materials. The notification process must ensure that all individuals, including those with visual and hearing impairments, are aware of the non-discrimination pledge.

Any recruitment or informational material published by a recipient must contain a statement regarding the recipients pledge not to discriminate on the basis of handicap in violation of 24 CFR Part 8.

Self-Evaluation: During the contract period, all recipients who are required to comply with Section 504 must complete a self-evaluation of their Section 504 compliance and keep it on file for monitoring purposes. Recipients that have completed a self-evaluation for a previous GLO-DR contract may use their previous self-evaluation forms on file to meet this requirement. During the self-evaluation process, the recipient must consult with individuals with handicaps or organizations representing them. The self-evaluation should include an examination of policies and practices relative to the 504 regulations. Any policies and practices that do not meet the 504 requirements must be modified, and corrective action taken to remedy any discrimination found.

Employment: Recipients should not use any practices that unreasonably limit employment opportunities for individuals with handicaps. Recipients must also reasonably accommodate the known needs of handicapped employees and applicants. Examples include retrofitting workstations to accommodate wheelchairs, and providing special computers for deaf and sight challenged workers.

10.1.7 Furthering Fair Housing

In order to comply with the Federal Fair Housing regulations, recipients and COGs under the DR Housing and Non-Housing Programs must conduct at least one activity during the contract period to affirmatively further fair housing. Title VI of the Civil Rights Act of 1964, as amended, (42 USC 2000) and Title VIII of the Civil Rights Act of 1968, as amended, (Fair Housing Act, 42 USC 3601) together provide for the protection of the following federally protected classes:

- Race and color;
- Religion;
- Sex;
- Handicap (Disability);



CHAPTER 10

CIVIL RIGHTS REQUIREMENTS

- National origin; and
- Familial status.

NOTE: National Fair Housing Month is April of each year. However, grantees may designate any month as Fair Housing Month at the local level. Designating April as "Fair Housing Month" by proclamation must be accompanied by sponsoring another activity such as the ones listed on the next page to support fair housing.

Both recipients and COGs sign certifications in the GLO-DR contract agreeing to several federal requirements. These certifications include that it will administer the program in conformity with the Civil Rights Act, the Fair Housing Act, and that it will affirmatively further fair housing, as specified by GLO-DR. Recipients and COGs must conduct one or more acceptable fair housing activities during the contract period. The GLO-DR program encourages the completion of these activities within the first 90 days of the contract commencement date. A contract cannot be administratively closed until the fair housing activity has been conducted and approved.

Fair Housing Activities Resource

HUD's Fair Housing Website at <http://www.hud.gov/groups/fairhousing.cfm> contains a wealth of information and tools for Grant Recipients to use in conducting fair housing activities.

Resources on the website include:

- The HUD Fair Housing Guide;
- Fair Housing Brochures and logos;
- Fair Housing Best Practices;
- Contact information for fair housing advocacy organizations; and
- Accessibility guidelines for housing units.

The recipient may elect to pay for fair housing activities and count the expenses toward the local match requirement, or submit a reimbursement request for eligible and reasonable costs to be paid by the GLO-DR grant under the General Planning and Project Delivery line item.



CHAPTER 10

CIVIL RIGHTS REQUIREMENTS

Suggested Ideas for Meeting the Fair Housing Activities Requirement

- Conduct a community-wide housing analysis to determine impediments to fair housing and implement actions to eliminate these impediments.
- If the Grant Recipient is a city, pass a fair housing ordinance. It is important that the ordinance include a penalty clause. Also, publicize the existence of such an ordinance (e.g., newspaper advertisement, or fliers enclosed in utility bills).
- If the Grant Recipient is a county, adopt written fair housing policies and procedures that are equivalent to a fair housing ordinance and publicize the existence of the policies/procedures (e.g., newspaper advertisement). A sample fair housing policy may be obtained from GLO-DR.
- Sponsor or fund fair housing counseling/referral services for owners and renters.
- Have a written local complaint and monitoring process and notify the public of its existence through newspaper advertisements, or through notices in utility statements.
- Promote housing opportunities outside historically minority and/or low and moderate-income neighborhoods.
- Designate April as "Fair Housing Month" by proclamation along with another sponsoring activity.
- Utilize local businesses and banking institutions to promote fair housing by displaying fair housing posters.
- Announce the Grant Recipient's support of fair housing by means of newspaper advertisements, marquis displays, or public service announcements.
- Conduct free training workshops on fair housing laws to homebuyers, rental property owners, and tenant organizations.
- Sponsor a poster contest or essay writing contest at local schools to educate and promote fair housing.
- Review local zoning laws and procedures to determine whether they contribute to, or detract from, fair housing choice.
- Find ways to inform builders and architects as early as possible in the project design phase, but certainly no later than the issuance of a building permit, of the need to comply with the accessibility requirements of the Fair Housing Act.



CHAPTER 10

CIVIL RIGHTS REQUIREMENTS

10.1.8 Monitoring and Recordkeeping

In monitoring recipients for Equal Opportunity and Fair Housing compliance, GLO-DR staff will review at least the following four major areas:

1. The beneficiaries of each GLO-DR funded contract.
2. Documentation of completed fair housing activities. Recipients should maintain the following files and have available for review:
 - Beneficiary data by race, ethnicity and gender;
 - Any and all handbooks, policies and procedures manuals, and resolutions or ordinances regarding employment;
 - Any advertisement for employment and documentation regarding the subsequent applicants and individuals hired. Advertisements should contain the language "equal employment opportunity employer" (or similar);
 - An *Excessive Force Policy*;
 - Contractor Certification of Compliance with Section 3 or equivalent;
 - Written *Section 3 Policy* for recipient and all other parties under contract engineering firms and administration consultant as well as construction contractors;
 - Correspondence concerning Contractor Equal Opportunity compliance;
 - Copies of *Financial Interest Reports* with MBE information;
 - Newspaper advertisements of the Notice on Section 504 Compliance Requirements;
 - *Section 504 Self-Evaluation Review*;
 - All records related to fair housing, including monetary expenditures and specific descriptions of the fair housing activities performed; and
 - Complaints, if any and actions taken.
3. The city/county's personnel policies.
4. The actual personnel practices that are being followed or implemented locally. This includes hiring, advertising for vacancies, employment, promotions, transfers, demotions, and dismissals, as well as a review of any past cases alleging discrimination against the recipient.

In the event that there has been a determination of discrimination against a recipient, the recipient must develop a plan that identifies the effects of past discrimination and specifies actions to overcome the identified effects. A determination of discrimination can be a result of:

- A compliance review conducted by the HUD or by the GLO-DR program;



CHAPTER 10

CIVIL RIGHTS REQUIREMENTS

- A discrimination complaint investigation carried out by the HUD Regional Fair Housing and Equal Opportunity Office ("FHEO"); or
- An employment discrimination complaint investigation conducted by the EEO Commission.

The GLO-DR program encourages the recipient to take affirmative action to address self-identified instances of possible discrimination that is indicative of past discrimination. For example, if recipient employment is not representative of the general population of the jurisdiction, recipients are encouraged to design a program to affirmatively increase employment, training, and promotion opportunities for members of the affected groups.

The box below provides contact information for the Texas Workforce Commission's Civil Rights Division.

Complaints of employment discrimination should be referred to the Texas Workforce Commission's Civil Rights Division.

**Texas Workforce Commission
Civil Rights Division**

101 East 15th Street, Room 144-T
Austin, Texas 78778-0001
Toll Free Phone: 1-888-452-4778
Website:
<http://www.texasworkforce.org/>

**Equal Employment Opportunity
Commission**

207 S. Houston Street, 3rd Floor
Dallas, TX 75202-4726
Phone: 1-800-669-4000
Website: <http://www.eeoc.gov/>

10.1.9 Applicable Federal Laws

The following list of federal laws and executive orders apply to all GLO-DR funded contracts. Copies of these laws and their implementing regulations can be found online at <http://www.hudclips.org>.

10.1.10 Equal Opportunity

Title VI of the Civil Rights Act of 1964, as Amended (42 U.S.C. 2000d): This Act states that no person may be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving federal financial assistance on the basis of race, color, or national origin. *Regulation citation: 24 CFR Part 1.*

Title VIII of the Civil Rights Act Of 1968, as Amended: This Act prohibits discrimination in the sale or rental of units in the private housing market against any person on the basis of race, color, religion, sex, national origin, familial status or handicap. *Regulation citation: 24 CFR Parts: 105,108,109,110 and 115; Part 200 subpart M.*



CHAPTER 10

CIVIL RIGHTS REQUIREMENTS

Section 109 of the Housing And Urban Development Act of 1974, as Amended: This Act requires that no person be excluded from participation in, denied the benefits of, or be subjected to discrimination under any program or activity funded under the CDBG Program on the basis of race, color, age, disability, religion, national origin or sex. *Regulation citation: 24 CFR 570.602.*

Age Discrimination Act of 1975, as Amended: This Act states that programs receiving federal assistance may not discriminate on the basis of age, unless an age distinction is necessary to accomplish the objective of the program. *Regulation citation: 45 CFR Part 91.*

Section 504 of the Rehabilitation Act of 1973, as Amended: This Act states that no otherwise qualified individual may be excluded, solely because of his/her handicap, from participation in, the benefits of, or subject to discrimination under any program or activity receiving federal financial assistance. *Regulation citation: 24 CFR Part 8.*

Section 104 of the Housing and Community Development Act of 1974, as Amended.

10.1.11 Handicapped Accessibility

Section 504 of the Rehabilitation Act of 1973, as Amended: This Act states that no otherwise qualified individual may be excluded, solely because of his/her handicap, from participation in, the benefits of, or subject to discrimination under any program or activity receiving federal financial assistance. *Regulation citation: 24 CFR Part 8.*

Architectural Barriers Act of 1968, as Amended (42 U.S.C. 4151-4157): This Act requires that certain federally funded buildings or facilities be designed, constructed or altered to ensure accessibility to, and use by, physically handicapped persons. Buildings or facilities allocated or reallocated GLO-DR funds after December 11, 1995, that meet the definition of "residential structure" (as defined in 24 CFR 40.2) or the definition of "building" [as defined in 41 CFR 101-19.602(a)] are subject to the Architectural Barriers Act and must comply with the Uniform Federal Accessibility Standards. *Regulation citation: Appendix A to 24 CFR Part 40 for "residential structures" and Appendix A to 41 CFR Part 101-19 for "general buildings".*

Americans with Disabilities Act ("ADA"): This Act provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services and telecommunications. The ADA also states that discrimination includes the failure to design and construct facilities (built for first occupancy after January 26, 1993) that are accessible to and usable by persons with disabilities. The ADA also requires the removal of architectural and communication barriers that are structural in nature in existing facilities. Removal must be readily achievable, easily accomplishable and able to be



CHAPTER 10

CIVIL RIGHTS REQUIREMENTS

carried out without much difficulty or expense. *Regulation citation: 42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225.*

Title II of the ADA, 28 CFR 35 102-104, extends the prohibitions of discrimination on the basis of disability established by Section 504 of the Rehabilitation Act of 1973 to include all activities of state and local governments whether or not they receive federal funds.

10.1.12 Employment and Contracting

Equal Employment Opportunity, Executive Order 11246, as Amended: This Executive Order prohibits discrimination against any employee or applicant for employment because of race, color, religion, sex, or national origin. Provisions to effectuate this prohibition must be included in all construction contracts exceeding \$10,000. *Regulation citation: 41 CFR Part 60.*

Section 3 of the Housing and Urban Development Act of 1968, as Amended: This Section provides for training and employment opportunities, to the extent possible, to lower-income residents of the project area and to provide contracts associated with GLO-DR funded projects to businesses located in the project area or to businesses owned, in substantial part, by residents of the project area. *Regulation citation: 24 CFR Part 135.*

Section 109 of the Housing And Urban Development Act of 1974, as Amended: This Act requires that no person be excluded from participation in, denied the benefits of, or be subjected to discrimination under any program or activity funded under the CDBG program on the basis of race, color, age, disability, religion, national origin or sex. *Regulation citation: 24 CFR 570.602.*

Section 504 of the Rehabilitation Act of 1973, as Amended: This Act states that no otherwise qualified individual may be excluded, solely because of his/her handicap, from participation in, the benefits of, or subject to discrimination under any program or activity receiving federal financial assistance. *Regulation citation: 24 CFR Part 8.*

10.1.13 Excessive Force

24 CFR Part 91, Section 225 (b) 5: The Consolidated Plan for Community Planning and Development Programs require that in order for a local government to receive GLO-DR funds, it must certify that it has adopted and is enforcing a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations. In addition, and in the case where there is no local police department, the local government also must certify that it has adopted and is enforcing a policy against physically barring entrance to or exit from, a facility or location that is the subject of such non-violent civil rights demonstrations within its jurisdiction.



CHAPTER 10

CIVIL RIGHTS REQUIREMENTS

10.1.14 Fair Housing

The Fair Housing Act (42 U.S.C. 3601-3620): This Act prohibits discrimination in the sale or rental of housing, the financing of housing or the provision of brokerage services against any person on the basis of race, color, religion, sex, national origin, handicap or familial status. Furthermore, Section 104(b)(2) of the Act requires that each recipient certify that it is affirmatively furthering fair housing. *Regulation citation: 24 CFR Part 100-115.*

Equal Opportunity in Housing (Executive Order 11063, as Amended by Executive Order 12259): This Act prohibits discrimination against individuals on the basis of race, color, religion, sex or national origin in the sale, rental, leasing or other disposition of residential property, or in the use or occupancy of housing assisted with federal funds. Additionally, it provides the Secretary of HUD with the leadership role in the administration of all federal programs and activities relating to housing and urban development in order to further fair housing throughout the United States. *Regulation Citation: 24 CFR Part 107.*

Section 104 of the Housing and Community Development Act of 1974, as Amended.

10.1.15 Displacement / Relocation

Title VI of the Civil Rights Act of 1964, as Amended (42 U.S.C. 2000d): This Act states that no person may be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving federal financial assistance on the basis of race, color, or national origin. *Regulation citation: 24 CFR Part 1.*

Section 109 of the Housing And Urban Development Act of 1974, as Amended: This Act requires that no person be excluded from participation in, denied the benefits of, or be subjected to discrimination under any program or activity funded under the CDBG program on the basis of race, color, age, disability, religion, national origin or sex. *Regulation citation: 24 CFR 570.602.*

Title VIII of The Civil Rights Act Of 1968, as Amended: This Act prohibits discrimination in the sale or rental of units in the private housing market against any person on the basis of race, color, religion, sex, national origin, familial status or handicap. *Regulation citation: 24 CFR Parts: 105, 108, 109, 110 and 115; Part 200 Subpart M.*

Section 104 of the Housing and Community Development Act of 1974, as Amended.



CHAPTER 10

CIVIL RIGHTS REQUIREMENTS

10.2 Housing Specific Requirements

Handicapped Accessible Homes

According to the Texas Government Code, Section 2306.514, a newly constructed single family home that is made possible through DR Program funds, must meet the following accessibility requirements:

- Breaker boxes must be placed inside the building on the first floor (unless local building codes require otherwise);
- The top of each electrical panel or breaker box, light switch, or thermostat is not higher than 48 inches above the floor (unless local building codes require otherwise);
- The structure should have at least one entrance door on an accessible route served by a ramp or no-step entrance and having, at a minimum, a standard 36 inch door opening (the entrance door may be located on the front, side or back of the building);
- On the first floor of the building, each interior door must have, at minimum, a 32 inch door opening, unless the door provides access only to a closet of less than 15 square feet in area;
- Each hallway must have a width of at least 36 inches and is level with ramped or beveled hangs at each door threshold;
- All bathroom walls must be reinforced to possibly accommodate installation of grab bars; and
- Each electrical plug or other receptacle must be at least 15 inches above the floor.

10.3 Non-Housing Specific Requirements

Public Handicapped Accessible Facilities

For all new public building construction, or rehabilitation in which building construction is expected to exceed \$50,000, Contractors are required to submit plans and specifications to the Texas Department of Licensing and Regulation ("TDLR") for review and approval. The TDLR is responsible for ensuring that all plans and specifications meet accessibility requirements. The TDLR clearance requirement is included in the Special Conditions of all GLO-DR contracts that include Public Facilities.



Chapter 11

CONTRACT CLOSE-OUT

CONTRACT CLOSE-OUT

11.1	Close-Out Report	126
11.1.1	Part I. General Reports	126
11.1.2	Part II. Performance Report	129
11.1.3	Part III. Beneficiary Report	130
11.1.4	Part IV. Final Financial Interest Report	131
11.2	Acceptance of Close-Out Report.....	131
11.3	Housing Specific Requirements	133
11.4	Non-Housing Specific Requirements	133



CONTRACT CLOSE-OUT

The close-out process should begin when:

- All costs to be paid with GLO-DR funds have been expended and requested for payment, with the exception of close-out costs (final administrative and audit costs) and other costs approved in writing by the GLO-DR program;
- The work described in the Performance Statement has been completed; and
- The recipient's other responsibilities under its agreement with the GLO-DR program have been met.

11.1 Close-out Report

The *Project Completion Report*, or "PCR", must be submitted to the GLO by the Grantee no later than 60 days after the contract termination date (i.e. the PCR due date) or at the conclusion of all contract activities as determined by the GLO, whichever comes first.

Additionally, when a project site with the Grantee's Performance Statement is substantially complete, the GLO Grant Manager must be notified within two weeks of the Grantee's Letter of Acceptance. This notification must be in writing and may be delivered by mail, email or facsimile.

The PCR consists of four separate parts, described below.

11.1.1 Part I. General Reports

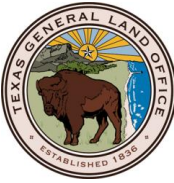
Total Persons Benefitting

Report the total number of beneficiaries and the number of low- and moderate-income beneficiaries for each project.

Certificate of Expenditures

Documents financial status of the completed project, including both GLO-DR funds and any other funds used for the project, listed by budget activity in the following columns:

- GLO-DR Budget: Funds allotted to each budget activity according to the GLO-DR Contract Exhibit B, Budget including all amendments and modifications.
- GLO-DR Funds Drawn To Date: Funds received from the GLO-DR program through approved Requests for Payment. Pending Requests for Payment are NOT included in this amount.
- GLO-DR Reserved Funds: Costs that have been incurred but have not yet been reimbursed by the GLO-DR program. This amount includes Requests



CHAPTER 11

CONTRACT CLOSEOUT

for Payment that have been submitted but not yet approved, as well as requests that have not been submitted by the recipient. This column may only be used if the PCR is submitted on or before the PCR due date.

- **Unutilized Funds (Deob):** Funds that will NOT be requested by the recipient, including all funds not drawn to Date or requested for Reserve. All funds included in this column will be de-obligated by the GLO-DR program upon administrative completion of the contract and will be unavailable for reimbursement.
- **Local Contribution:** All funds or in-kind contributions other than GLO-DR funds used to complete the project.

The GLO-DR program will de-obligate all funds that are:

- Identified by the recipient in the Unutilized Funds (Deob) column;
- Not requested for payment or reserved by the PCR due date; or
- Reserved but not requested for payment with appropriate documentation within 90 days after the contract end date or approved for extended reserve (see table below).

In limited circumstances, the GLO-DR program may allow funds to be reserved for more than 90 days after the contract end date. This extended reserve period must be requested by the recipient and approved by the GLO-DR program in writing. Extended reserve may be approved in the following cases:

- The GLO-DR contract is part of a project funded through multiple funding agencies, and the GLO-DR-funded activities are complete while related activities are not yet complete;
- The GLO-DR contract is involved in litigation or other disputes regarding workmanship; or
- Other circumstances approved in writing by GLO-DR staff.

Costs that may be Reserved more than 90 Days after the Contract End Date

Costs	Maximum Amount Reserved	Deadline to Submit Request for Payment
Audit Costs	Actual cost of Single Audit reports if required by GLO-DR	Contract End Date + Fiscal Year End + nine months (costs for delinquent audit will not be reimbursed)
Other Reserved	Amount approved by GLO-DR	"Administratively Complete" letter + 30 days



CHAPTER 11

CONTRACT CLOSEOUT

Fair Housing, Civil Rights & Citizen Participation

This section of the PCR requires the recipient to certify by checking the appropriate boxes that the following federal requirements, included in the GLO-DR contract and Chapter 10 of this manual, were satisfied under this contract:

- Equal Employment Opportunity Requirements;
- Section 3 Report Requirements;
- Promotion of MBE Participation requirements;
- Excessive Force Policy requirements;
- Section 504 Requirements; and
- Fair Housing Requirements.

The recipient must also provide the following additional information:

- Fair Housing Activity – Describe briefly the activities completed during the contract period to affirmatively further fair housing.
- Citizen Participation Requirements – Maintain documentation such as notices and minutes of public hearings, written complaints with responses, actions taken to involve citizens in implementing the program, an Affirmative Marketing Plan.
- Work Completed Date – Report the date that all construction or other project activities (excluding administrative tasks) were completed.

Certifications

The chief elected official must sign the PCR, certifying that:

- a. All activities undertaken with funds provided under the contract identified in this report, have, to the best of their knowledge, been carried out in accordance with the contract agreement;
- b. The information contained in this PCR is accurate to the best of their knowledge;
- c. All records related to contractor activities are available for review;
- d. GLO-DR funds were not used to reduce the level of local financial support for housing and community development activities;
- e. No attempt to recover any capital costs of public improvements assisted in whole or in part with such funds by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements unless:



CHAPTER 11

CONTRACT CLOSEOUT

- i. Such funds are used to pay the proportion of such fee or assessment that related to the capital costs of such public improvements that are financed from revenue sources other than such funds, or
 - ii. For purposes of assessing any amount against properties owned and occupied by persons of moderate income, contractor certifies that it lacks sufficient funds under this contract to comply with the requirements of clause (i);
- f. The persons to benefit from the activities described in Exhibit A, Performance Statement, of the contract are receiving service or a benefit from the use of the new or improved facilities and activities; and
- g. Proper provision has been made for the payment of all unpaid costs and unsettled third-party claims and the State of Texas is under no obligation to make any further payment to the recipient under the contract agreement in excess of the amount identified in the Certificate of Expenditures table as "GLO-DR Reserved Funds".

According to CDBG definitions, a document shall not be signed by a consultant in any other capacity other than "preparer" and the consultant's signature may not represent approval of any document. Title 18, United States Code, Section 1001, states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government.

Attachments

For each attachment, indicate whether the document is attached or not required.

- Project Map – If the project includes construction activities, the recipient must attach a project map showing the project as actually built.
- Evidence of Benefit – If the project includes work on private property, including water and sewer service connections, the recipient must attach evidence that the households are in fact receiving a benefit:
 - List the name, address, number of beneficiaries, and income level of each household; and
 - Documentation that beneficiaries are receiving services for such projects, such as:
 - Copies of utility bills for all beneficiary households;
 - Printout of accounts from utility billing system; and/or
 - Other reasonable documentation approved by GLO-DR.

11.1.2 Part II. Performance Report

Actual Accomplishments



CHAPTER 11

CONTRACT CLOSEOUT

Reports all work completed, organized by activity. Engineering and Project Delivery activities are not reported. The work reported must correspond to the project described in the Performance Statement and be described in quantitative terms. (If the Performance Statement describes a project item without using quantities, report the item as lump sum with a quantity of one.)

If the current Performance Statement and actual accomplishments vary in quantities and/or number of beneficiaries served, please contact the Grant Manager for technical assistance. A contract modification or amendment is generally required when quantities vary by more than 15% and in other cases as appropriate. If the completed project is significantly different from the Performance Statement, the PCR will not be accepted until a contract amendment is requested and GLO-DR staff determines that the changes are acceptable. The GLO-DR program is not obligated to reimburse work that is not included in the contract.

The recipient must confirm that the work was performed in the location(s) described in the current Performance Statement. If work was performed in a different location, the recipient must resolve this issue with GLO-DR staff prior to submitting the PCR.

HUD Performance Measures

Report performance measures as required by HUD separately for all activities, excluding engineering, project delivery, and acquisition (if incidental to the project).

For each activity, indicate the selection that best describes the activity.

11.1.3 Part III. Beneficiary Report

Indicate all activities to which the report applies at the top of the report. If multiple activities benefit exactly the same group of persons, the detailed beneficiary information may be reported once.

Note: If a subset of the beneficiaries of one activity also benefit from a different activity, the subset is a separate group that must be reported separately.

Add as many Beneficiary Detail Reports as necessary to describe all activities included in the GLO-DR Contract Exhibit A, Performance Statement (excluding engineering, planning and project delivery, and acquisition if incidental to the project).

Beneficiary Detail Report

Complete Beneficiary Detail Reports for all activities in the Performance Statement (excluding engineering, project delivery, and acquisition if incidental to the project). The total number of persons benefitting, and the number of households benefitting



CHAPTER 11

CONTRACT CLOSEOUT

if applicable, must equal the total beneficiaries or households for the activity in the Performance Statement.

Part III(a) Beneficiary Detail Report – Activities on Public Property – report all beneficiaries for the group of activities according to gender, race, ethnicity, and income level.

Part III(b) Beneficiary Detail Report – Activities on Private Property – report all information required by Part III(a) for persons benefitting, as well as similar information for each household receiving a benefit.

- Gender, race, and ethnicity information must be reported for the person designated as the “head of household” for each residence.
- Household income level is reported separately for owner-occupied and renter-occupied households; if information is not available, the household is presumed to be owner-occupied.

If the number of beneficiaries or homes actually served varies from the number of beneficiaries required by the current contract Performance Statement, the recipient must contact the Grant Manager for technical assistance regarding a Performance Statement amendment.

11.1.4 Part IV. Final Financial Interest Report

Report final procurement information for all contracts executed under the GLO-DR contract, including construction contractors and sub-contractors, and suppliers, with contracts of \$2,000 or more. The contract amount report should include any change orders. Check the appropriate box to report subcontracts valued at \$2,000 or more under the prime contractor.

All contracts and subcontracts included in this report should have been reported on a *Financial Interest Report*. If the information previously reported was incomplete or if information other than the contract amount has been modified, the recipient must submit revised reports prior to submitting the PCR.

11.2 Acceptance of the Close-out Report

Once the PCR is submitted, GLO-DR staff will review the report for accuracy and completeness.

- Incomplete reports will not be accepted and will be returned to the recipient.
- Minor deficiencies in the information provided (if any) will be described in a letter to the recipient and must be corrected, in most cases, within 30 days of that letter.
- PCRs that include serious deficiencies or information that does not reflect the Performance Statement and/or Budget will not be accepted and will be returned to the recipient.



CHAPTER 11

CONTRACT CLOSEOUT

Scanned versions of the signed PCR may initially be emailed to the Grant Manager. An acceptable, complete PCR will be considered “received” on the date the email is received by the Grant Manager. A PCR with the original signature of the chief elected official must be received within five business days of the electronic document.

Submit electronic copies to:

GLO-DR Program

Grant Manager email address @glo.texas.gov

Subject line: Grantee name, Contract No., Region

Delinquent Close-outs

Late submittal of close-outs may affect a recipient’s current or future GLO-DR funding.

- Requests for Payment on all open contracts may be held until an acceptable PCR is received.
- New awards and any other contracts may be placed on hold until an acceptable PCR is received, and the award may be withdrawn if the delinquencies are not resolved within 90 days of the award announcement.
- Continual unsatisfactory performance and delays in submitting close-out documents may be considered evidence of a lack of administrative capacity for future GLO-DR funding and continuation of any other grants.

If the recipient is unable to complete the PCR in a timely manner due to disputed construction work, litigation, participation of other funding agencies in a large scale or phased project, or other serious circumstance beyond the control of the recipient that prevents contract close-out, the recipient may request an exception to the PCR due date in writing. The GLO-DR program will respond to all such requests in writing. If an exception is granted:

- A new PCR due date will be established for the contract;
- The recipient will not be penalized for late submission in subsequent application cycles until the revised PCR due date;
- The recipient must provide quarterly reports until the PCR is submitted and accepted; and
- Another exception may be requested if the situation is not resolved by the new PCR due date.

A revised PCR submission date is NOT an extension of the contract period; costs incurred after the contract end date may not be eligible for reimbursement.



CHAPTER 11

CONTRACT CLOSEOUT

Contract Close-out

The contract close-out process involves three separate actions:

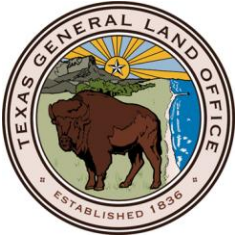
1. The recipient submits PCR, certifying that the project is complete and all requirements have been met.
2. GLO-DR program staff issues a letter stating that the project is Administratively Complete as described in Chapter 12, Quality Assurance Monitoring. This status allows GLO-DR staff to release any reserved Project Delivery funds (other than those reserved for audit costs).
3. GLO-DR audit staff issues an Audit Complete letter, stating that all required audit reports related to the project have been submitted and accepted. Once this letter is issued, funds reserved for audit costs may be released; however, any other reserved funds must be held until the contract is Administratively Complete.

11.2 Housing Specific Requirements

There are no other requirements that are specific to Housing only.

11.3 Non-Housing Specific Requirements

There are no other requirements that are specific to Non-Housing only.



Chapter 12

QUALITY ASSURANCE MONITORING

QUALITY ASSURANCE MONITORING

12.1	General Requirements (Housing and Non-Housing)	135
12.1.1	Desk Review	135
12.1.2	On-Site Review	136
12.1.3	Results of the Monitoring Review	137
12.2	Housing Specific Requirements	137
12.3	Non-Housing Specific Requirements	137



CHAPTER 12

QUALITY ASSURANCE MONITORING

QUALITY ASSURANCE MONITORING

The GLO-DR's Quality Assurance Program was developed as a result of Hurricanes Dolly and Ike and the state and federal government responses to these major natural disasters. The quality assurance program defines what must be done to ensure that disaster recovery efforts have met state, federal, and other legal requirements for administration of disaster relief. The quality assurance program complements state and federal oversight of the GLO-DR efforts by focusing quality assurance efforts and resources on the programmatic, operational, and regulatory risks associated with the undertaking of a program of such size and complexity.

Instead of commencing quality control activities at a certain percentage of project completion, GLO-DR management has determined that a level of quality assurance and monitoring throughout the life of a project and its related contracts will ensure more effective and efficient business processes and an overall higher level of programmatic compliance.

This chapter discusses the GLO-DR Program's Quality Assurance/Quality Control ("QA/QC") and monitoring. Monitoring includes desk reviews and on-site reviews. Monitoring is conducted to meet the following objectives:

- Review subrecipient/grantee/vendor performance. Performance will be monitored to ensure that activities have been completed, expended, and beneficiaries served in accordance with a contract's performance statement and budget.
- Review subrecipient/grantee/vendor compliance. Performance will be monitored to ensure compliance with program requirements, as outlined in the contract and other applicable state and federal rules, regulations, policies, and related statutes.
- Prevent fraud, waste, and abuse. Evaluate administrative systems, policies, and procedures for adequate protection and mitigation of these risks.
- Identify technical assistance needs. Conduct on-site reviews to identify and recommend technical assistance when deemed appropriate.

12.1 General Requirements (Housing and Non-Housing)

Quality assurance includes two types of program monitoring reviews. The first type is referred to as a "desk review." The second type is an "on-site monitoring review."

12.1.1 Desk Review

The desk review is a key component of basic monitoring activities and involves the review of significant and material project data already in-house, such as:

- Grantee's application;



CHAPTER 12

QUALITY ASSURANCE MONITORING

- Service provider contracts and work orders;
- Progress reports;
- Draw down requests and reimbursements;
- Written correspondences, including copies of audits; and
- Documentation of previous monitoring.

12.1.2 On-Site Review

On-site monitoring reviews are generally conducted in the following situations:

- The contract has not been previously monitored, and the construction activities are substantially completed;
- An interim on-site review or a complaint is received that warrants a visit;
- An on-site review is requested, and the request is approved by GLO-DR management; or
- Early on-site review is conducted to evaluate non-construction risk areas such as financial, procurement, or eligibility.

The following steps are an integral part of the on-site monitor review:

- Advance notification to schedule and explain the purpose of the on-site review;
- Conduct an entrance conference with appropriate local officials and their representatives to explain the purpose of the visit, coordinate logistics, and schedule an exit conference;
- Review, test, and evaluate contract files and other supporting documentation;
- Interview members of the subrecipient's or grantee's staff, engineers, consultants and/or project beneficiaries, as appropriate, to discuss project related issues;
- Tour construction site(s) with a local official and/or other local staff who are knowledgeable about the project activities and can answer questions about quantitative accomplishments, projected construction completion, and whether beneficiaries are being served, etc.;
- Conduct an exit conference to present the preliminary conclusions that may be a result of the review; and
- Issue a formal report 30 days after the completion of fieldwork for a regularly scheduled monitoring visit. Special projects may take longer to report.



CHAPTER 12

QUALITY ASSURANCE MONITORING

12.1.3 Results of the Monitoring Review

If the monitoring review reveals findings (non-compliance) and/or concerns, Quality Assurance reports the non-compliance findings and/or concerns, including recommendations to resolve the finding. The Quality Assurance Monitoring Report is generally issued to the grantee or subrecipient within 30 days of the completion of fieldwork.

If a response to the report is required, the grantee or subrecipient must respond within 30 days from the date indicated on the report. Failure to resolve non-compliance findings may result in the following actions:

- The remaining balance of the funds is placed on hold, or de-obligated;
- Unresolved findings of questioned costs or use of funds result in the disallowance of the related expenditures and require repayment of funds to the program;
- The grantee or subrecipient is prohibited from applying for future funds that are funded in a certain category or all future funded categories for a period of time based on the level of the noncompliant issues and required resolutions;
- The grantee or subrecipient is penalized by other sanctions that are deemed allowable by program rules, regulations, policies, contractual provisions, and law; and
- Work with other entities to resolve other monitoring and audits.

When grantee performance is deficient, as noted in the monitoring review report(s), Quality Assurance staff will track the resolution of the findings. Unresolved findings will be considered in the subsequent Quality Assurance planning and monitoring cycle. Failure to respond satisfactorily to findings may result in sanctions being applied to the grantee.

12.2 Housing Specific Requirements

There are no other requirements that are specific to Housing only.

12.3 Non-Housing Specific Requirements

There are no other requirements that are specific to Non-Housing only.



CHAPTER 13

AUDIT REQUIREMENTS

AUDIT REQUIREMENTS

13.1	General Requirements (Housing and Non-Housing)	139
13.1.1	Conducting the Audit and Preparing the Report	139
13.1.2	Primary Objectives of the Audit	140
13.1.3	Auditor Qualifications	140
13.1.4	Submissions	141
13.1.5	Audit Report Content Requirements	142
13.1.6	Audit Work Papers	144
13.1.7	Audit Tracking and Resolution	144
13.1.8	Liability	146
13.1.9	Audit Costs	147
13.1.10	Laws and Regulations	148
13.2	Housing Specific Requirements	148
13.3	Non-Housing Specific Requirements	149



CHAPTER 13

AUDIT REQUIREMENTS

AUDIT REQUIREMENTS

This chapter presents GLO-DR audit requirements required by 31 U.S.C. §7501 et seq. GLO-DR holds each recipient responsible for all funds expended. It is the responsibility of each recipient to submit an Audit Certification Form ("ACF") or similar financial information within 60 days after the end of each fiscal year during which the recipient has an open contract. The submission of an ACF is required of all recipients. After submitting the ACF, if a Single Audit is required, the recipient must also arrange for an annual financial and compliance audit, as stipulated in the contract.

Note: A grantee expending less than \$500,000 a year in federal or state awards is exempt from the Single Audit requirements for that year. However, records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity and the GLO.

13.1 General Requirements (Housing and Non-Housing)

The type of audit required is based on the total federal or total state financial assistance expended by an organization in any given fiscal year and/or number of federal or state programs involved. Currently, any government or nonprofit entity that expends \$500,000 or more within their fiscal year in total federal or state awards must have a Single Audit or a Program Specific Audit conducted for that fiscal year.

Program Specific Audit: A program specific audit is an audit of one federal program, such as GLO-DR or one state program. A program-specific audit is allowed when the recipient expends \$500,000 or more in total federal or total state assistance under only one federal or one state program and the federal or state program laws, regulations or grant agreements do not require a Single Audit of the recipient.

Single Audit: A single audit is an audit of:

- The entire organization's financial statements, referred to as the Comprehensive Annual Financial Report ("CAFR"), or the Annual Financial Report ("AFR"); and
- Federal or state awards, from all applicable federal or state programs, referred to as the Single Audit Supplemental Reports ("SAS").

13.1.1 Conducting the Audit and Preparing the Report

A *Single Audit Checklist* for the Certified Public Accountant ("CPA") to complete and use as a guide when an Audit is required. The checklist must be submitted to the GLO-DR Quality Assurance Group along with the required audit reports.



CHAPTER 13

AUDIT REQUIREMENTS

13.1.2 Primary Objectives of the Audit

Administrative Compliance

- To determine that the organization has implemented and utilized appropriate financial and administrative systems and controls to effectively discharge management responsibilities and to accomplish program objectives;
- To determine that the organization is in compliance with applicable uniform administrative requirements;
- To determine if the financial statements are fairly presented in accordance with generally accepted accounting principles; and
- To determine that the organization is in compliance with cost principles.

Contract Compliance

- To determine that the organization has complied with contract requirements and with applicable state and federal laws, rules and regulations; and
- To determine whether the financial information and/or reports submitted to the GLO-DR Quality Assurance Group, including annual ACFs and claims for advances and reimbursements, contain accurate, reliable and complete financial data and are presented in accordance with the terms of the GLO-DR Contract.

13.1.3 Auditor Qualifications

The audit must be conducted by a CPA who has a current license issued by the Texas State Board of Public Accountancy. The CPA must meet all of the general standards concerning qualifications, independence, professional judgment, competence and quality control and assurance as required by Government Auditing Standards, 2003 Revision, Chapter 3, including the requirements for continuing professional education and external peer reviews. Soliciting and contracting for professional auditing services are subject to all federal/state procurement requirements as discussed in Chapter 4 of this manual.

Findings and Recommendations: All audit findings and recommendations, in either the financial or compliance areas, should be fully addressed by the CPA firm with the recipient at the exit conference. This provides:

- The recipient with advance information to initiate corrective action prior to receipt of the final audit report; and
- The auditor an opportunity to obtain additional information, explanations, or comments from the recipient, which may have a bearing on the auditor's conclusions and should be incorporated in the audit report, if applicable.



CHAPTER 13

AUDIT REQUIREMENTS

13.1.4 Submissions

Audit Certification Form ("ACF"): The GLO-DR Quality Assurance Group will coordinate audit review activities. Recipients with open contracts must submit the ACF, or similar financial information certification within 60 days after the recipient's fiscal year end. The ACF must list all open contracts (GLO-DR and all others) and corresponding expenditures for the fiscal year, when the recipient is not required to submit a Single Audit report or Program Specific Audit report.

The ACF should be completed by the recipient's Certifying Officer, designee or CPA firm and signed off as to its accuracy and completeness. The ACF may be e-mailed, mailed, or faxed.

Contact Information for Audit Questions

Texas General Land Office
Quality Assurance Group
Disaster Recovery Program – Financial Management
P.O. Box 12873
Austin, Texas 78711-2873
(512) 936-0523, (512) 936-0457
or (800) 998-4GLO
Fax (512) 305-9273
Web www.GLO@state.tx.us

Single Audit Report Package: For each year the Single Audit requirements are met, the recipient must submit one copy of:

- *Single Audit Report Checklist;*
- The Single Audit report;
- The management letter issued by the CPA firm, if applicable; and
- The recipient's response to each finding listed in the management letter.

These documents must be submitted to the GLO-DR Quality Assurance Group within 30 days of final presentation of the report by the CPA firm to the recipient, but no later than nine months after the end of the recipient's fiscal year. A copy of the Single Audit report must also be available for public inspection within 30 days of its completion.

Delinquent Report: Recipients that have not submitted an ACF within 60 days and/or a Single Audit report within nine months after the end of their fiscal year will be considered delinquent. An incomplete ACF or Single Audit Report Package is also considered delinquent.



CHAPTER 13

AUDIT REQUIREMENTS

The following may be imposed on recipients with a delinquent ACF and/or Single Audit Report package:

- Funding restrictions on all open contracts;
- Freezing of any current awarded contracts;
- Recipient ineligible to submit an application to request future funding; and
- Unresolved delinquencies may ultimately be reviewed by the Attorney General's Office.

13.1.5 Audit Report Content Requirements

Financial Reports: The following financial reports must be in the audit report:

- General purpose financial statements including applicable schedules, notes and opinion.
- Management's Discussion and Analysis of financial activities including financial highlights, overview of the financial statements and government wide financial analysis as recommended by Governmental Accounting Standards Board ("GASB") No. 34.
- SAS Reports based on revisions to OMB Circular A-133 and UGMS Texas Single Audit Circular, including:
 - The Schedule of Expenditures of Federal (or State) Awards (with the appropriate opinion, and notes to this schedule) which must:
 - Include the appropriate federal and pass-through grantor,
 - Identify each program under which the recipient had expended Federal (or State) funds either directly or passed through a state agency, and
 - Include the contract or grant number, award amount, Catalog of Federal Domestic Assistance ("CFDA") number, total amount expended per program, and total amount expended per federal funding source.
 - The Schedule of Findings and Questioned Costs; and
 - The reports on internal controls and compliance.

NOTE: The CFDA number for HUD contracts is 14.228.

Accepted Practices Statement: Each audit should indicate that the audit was done in accordance with generally accepted government auditing standards. It should express an opinion as to whether the financial statements are fairly



CHAPTER 13

AUDIT REQUIREMENTS

presented in accordance with generally accepted accounting principles and state the nature of any qualifications.

Required Audit Reports

- Opinion/Report on Organization's Financial Statements in accordance with Government Auditing Standards ("GAS").
- Opinion/Report on Schedule of Expenditures of Federal Awards.
- A Schedule of Expenditures of Federal Awards, including notes.
- A Schedule of Findings and Questioned Costs including Corrective Action Plan ("CAP"), which states timeline and person responsible for corrective action, and a section for the status of prior year findings and questioned cost.
- Report on Internal Control over Financial Reporting and on compliance and other matters based on an Audit of Financial Statements Performed in Accordance with GAS.
- Report on Compliance with Requirements that could have a direct and material effect on each Major Program and/or Internal Control over Compliance in Accordance with OMB Circular A-133.

Compliance: General compliance requirements include political activities, Davis-Bacon Act, civil rights, cash management, relocation assistance, real property acquisition, and federal financial reports. Specific compliance requirements include types of service, eligibility, reporting requirements and any special provisions of the contract.

Internal Accounting Controls Compliance: Reports on the study and evaluation of internal accounting controls should contain a review of those controls designed to provide reasonable assurance that federal or state programs are being managed in compliance with laws and regulations. Control deficiencies, significant deficiencies, and/or material weaknesses identified as a result of the evaluation should include recommendations to correct noted deficiencies in financial management and/or administrative controls. Management letters referenced and recipient's responses and planned corrective action to resolve the findings noted must also be submitted.

Statement of Assurance: The auditor's reports on compliance should contain statements of assurance with respect to compliance with contracts, laws, and regulations pertaining to financial reports and claims for advances and reimbursements and a summary of all instances of noncompliance or a statement if there are no findings.



CHAPTER 13

AUDIT REQUIREMENTS

13.1.6 Audit Work Papers

Audit work papers must be retained for a period of three years with the qualification listed in OMB Circular A-133. Audit work papers are subject to review by the DOL, HUD, the GAO, the GLO-DR program, and the State Auditor's Office.

NOTE: This requirement applies to the work papers of the auditor only. GLO-DR contract records, including any audit reports documenting GLO-DR expenditures, must be retained as described in the GLO-DR contract and Program Overview.

13.1.7 Audit Tracking and Resolution

The GLO-DR Quality Assurance Group will be responsible for follow-up on any deficiencies, audit findings and questioned costs noted in the financial and audit compliance reports. Audit resolution is the process by which the State:

- Resolves questioned costs by either allowing or disallowing; and
- Reviews and approves action proposed by the recipient to correct administrative findings and/or deficiencies.

Audit Review: After the audit report is received by the GLO-DR Quality Assurance Group, an initial resolution letter may be sent to the recipient requesting a response to administrative findings and/or deficiencies as well as any questioned costs. If no resolution letter is necessary, the recipient will receive an acceptance letter for the audit submitted.

Audit Resolution: Audit review findings will address four specific areas:

- Financial deficiencies that identify weaknesses in accounting systems or internal controls;
- Program deficiencies which identify weaknesses in program operations or controls;
- Cited instances of noncompliance with applicable laws and regulations; and
- Cited instances of concern within the Management Letter involving either contract(s) directly, or as recipient cross-cutting concerns that could have an ultimate impact on the contract(s).

The following sanctions may be imposed on recipients with delinquent responses:

- Funding restrictions on all open contracts;
- Freezing of any current awarded contracts;
- Recipient ineligible to submit an application to request future funding; and



CHAPTER 13

AUDIT REQUIREMENTS

- Unresolved delinquencies may ultimately be reviewed by the Attorney General's Office.

The recipient's response must be submitted to the GLO-DR Quality Assurance Group for review within 30 days. If the response is acceptable, the recipient will be notified in writing that the audit report will be accepted, subject to the federal funding agencies (HUD) review and approval.

If the response is not acceptable, the GLO-DR Quality Assurance Group will send a second resolution letter, giving the recipient an additional 15 days to respond. The Quality Assurance Group will request additional documentation for further review, or will request a refund, based on a determination to:

- Allow or disallow the questioned costs; and
- Accept or reject responses to administrative findings.

Recipients that do not respond to the first two resolution letters within the time period allowed will be considered delinquent. The Quality Assurance Group will then send a third "Final Demand" letter. If the recipient does not respond to the Final Demand letter within 15 days, the sanctions listed above maybe imposed.

Findings and Determinations: Determinations, sent to the recipient after receipt of response to resolution correspondence, will include:

- A summary of the matter in controversy;
- Those costs allowed and disallowed and the reason for the determinations based on requirements of the Act, regulations and contract terms;
- Necessary corrective action required for the recipient to achieve compliance;
- Acceptance or rejection of any corrective actions taken and the reasons for such action;
- A request for additional documentation to satisfactorily respond to findings, or a request for refund;
- Specific time frame to submit additional documentation; and
- If considered appropriate, sanctions available to GLO-DR if corrective actions are not performed and/or documentation is not provided.

To ensure that corrective actions are taken to resolve all weaknesses noted in administrative findings, GLO-DR will:

- Require the recipient to submit a corrective action plan for review and approval; and
- Follow-up to ensure implementation.



CHAPTER 13

AUDIT REQUIREMENTS

A grantee will not be considered in compliance with the GLO-DR program until all issues are adequately addressed and considered acceptable by the GLO.

13.1.8 Liability

Disallowed Costs Liability: Liability associated with disallowed costs is viewed as a critical issue. Therefore, it is important to take steps against liability. Careful consideration should be given to establishing and maintaining management systems that provide for the following recommended elements:

- Guidelines consistent with state law and OMB A-102 should be established for the procurement of services, equipment and supplies;
- Invoicing procedures should be in place to ensure accountability for the use of funds;
- A problem identification/corrective action system should be established and used; and
- Appropriate and immediate action should be taken to correct problems.

Inadequate Administrative Controls Liability: Implementation of and compliance with an internal control system as described below will ensure acceptable standards of accounting and administrative control. This in turn will reduce liability due to inadequate administrative controls.

Develop an Internal Control System: This system should include written policies and procedures that are available during on-sight reviews, evaluations, and audits. This should include an organization chart, and all the methods and measures adopted, in order to:

- Safeguard recipient's resources;
- Assure the accuracy and reliability of its information;
- Assure adherence to applicable federal, state, and local laws, regulations and policies; and
- Promote operational economy and efficiency.

Provide for Effective Use of the System: The recipient should delegate specific responsibilities to an official or committee to develop, maintain, review and improve the system.

Develop Standards of Internal Administrative Control: At a minimum, the following standards should be included in the recipient's internal control system:

- Competent key personnel;



CHAPTER 13

AUDIT REQUIREMENTS

- Qualified supervision with clear lines of responsibility, authority, and accountability;
- Properly recorded and executed transactions;
- Clear documentation and accountability for resources and financial transactions;
- Separation of duties, i.e., appropriate segregation of duties; and
- Provisions to limit access to resources.

13.1.9 Audit Costs

The cost of audits made in accordance with these guidelines is allowable if provided for in the Contract, if the threshold for requiring a Single Audit has been met and/or exceeded, or if the Contract stipulates a special condition requiring a program-specific audit due to past performance issues. Audit fees for delinquent audits are not eligible for reimbursement.

Generally, the percentage of costs charged to the GLO-DR program for a Single Audit shall not exceed the percentage of GLO-DR expended contractual funds to total expended grant funds from any agency during the fiscal year. This percentage is applied to the Single Audit portion of the Total Audit Cost. However, the percentage may be exceeded if appropriate documentation demonstrates a higher actual cost due to compliance testing or other factors.

Total Audit Costs = Basic Audit cost + Single Audit cost

GLO-DR % share = GLO-DR Expended Dollars ÷ Total Federal Expended Dollars

GLO-DR Allowable Costs = Single Audit cost x GLO-DR % Share

Therefore, when submitting a request for audit fees, the recipient should submit an invoice that clearly shows the total cost of the Single Audit portion and the corresponding prorated charge per funding source. In addition, when applicable, an explanation should be submitted supporting why the percentage of charges exceeds the percentage amount of funds expended of total expended funds by the recipient.

Exceptions to allowable audit costs:

- Audit fees for delinquent audits are not eligible for reimbursement from the GLO-DR program.
- If a determination is made that a Single Audit is required for a contract previously considered "administratively complete", and the Single Audit reports are not submitted with a request for reimbursement within the period allowed by Chapter 11, Contract Closeout, fees for such audit reports are not eligible for reimbursement under any GLO-DR contract.



CHAPTER 13

AUDIT REQUIREMENTS

13.1.10 Laws and Regulations

The Single Audit Act: The Act generally requires an annual, organization-wide audit of all state and recipients receiving federal or state funds. It requires that the audit be conducted in accordance with Government Auditing Standards issued by the Comptroller General of the United States. These standards relate to the scope and quality of audit effort and to the characteristics of professional and meaningful audit reports.

OMB Circular A-133 and the Texas Single Audit Circular: OMB Circular A-133 requires that each recipient expending \$500,000 or more of federal or state assistance for fiscal years after December 31, 2003, conduct a single audit. The Circular defines requirements pursuant to the Single Audit Act.

OMB Circular A-133 Compliance Supplement: OMB Circular A-133 includes the general and specific requirements applicable to Federal programs.

Additional Relevant Documents

- Government Auditing Standards <http://www.gao.gov/govaud/ybk01.htm>;
- "Government Auditing Standards and Circular A-133", AICPA Audit and Accounting Guide;
- OMB Circular A-102, Administrative Requirements <http://www.whitehouse.gov/omb/circulars/index.html>;
- OMB Circular A-87, Cost Principles <http://www.whitehouse.gov/omb/circulars/index.html>;
- State of Texas "Uniform Grant Management Standards" <http://www.governor.state.tx.us/divisions/stategrants>; and
- The GLO-DR Contract.

REFERENCE MATERIAL

The federal reference materials cited above may be accessed on the websites referenced or requested from:

- The U.S. Comptroller General; The OMB, or
- The Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

NOTE: American Institute of Certified Public Accountants ("AICPA") Guide is not available from the Superintendent of Documents.

13.2 Housing Specific Requirements

There are no other requirements specific to housing only.



CHAPTER 13

AUDIT REQUIREMENTS

13.3 *Non-Housing Specific Requirements*

There are no other requirements specific to Non-Housing only.



CHAPTER 14

RENTAL HOUSING

RENTAL HOUSING

14.1	Program Objectives (Multifamily and Single Family Rental)	151
14.2	Program Purpose (Multifamily and Single Family Rental)	152
14.3	Multifamily Rental Program	152
14.3.1	Types and Amounts of Assistance	152
14.3.2	Property Eligibility	153
14.3.3	Participant Eligibility Requirements	154
14.3.4	Selection Criteria	154
14.3.5	Program Requirements	156
14.3.6	Underwriting	157
14.3.7	Environmental Review	157
14.3.8	Construction	158
14.3.9	Compliance Requirements	159
14.4	Single Family Rental Program	162
14.4.1	Types and Amounts of Assistance	162
14.4.2	Property Eligibility	163
14.4.3	Participant Eligibility Requirements	164
14.4.4	Selection Criteria	164
14.4.5	Program Requirements	165
14.4.6	Underwriting	165
14.4.7	Environmental Review	165
14.4.8	Construction	165
14.4.9	Compliance Requirements	166
14.4.10	Land Use Restriction	166
14.4.11	Forgivable Loan Default	167
14.4.12	Relocation	168
14.4.13	Landlord Requirements	168



CHAPTER 14

RENTAL HOUSING

RENTAL HOUSING

This chapter has been developed to provide direction for the Rental Housing Program activities funded under Round 2 of the Hurricanes Ike and Dolly CDBG DR Program. This guide does not replace or supersede the Guidelines developed and in use under Round 1. Additionally, this guide will supplement the General Guidelines which provide direction for issues that affect all of the programs and cover all areas of administration not expressly covered in this document. For the purposes of this guide, rental activities may include multifamily or single family rental properties, or both as allocated in Regional 2.2 Methods of Distribution.

Benefit to LMI is the only National Objective that is approved for this program. Eligible activities are as follows: Rehabilitation; reconstruction; replacement; or new construction for documented units that were destroyed. Also eligible are costs associated with elevation and demolition activities. A recipient may also provide assistance for Individual Mitigation Measures including energy efficiency and storm mitigation activities.

14.1 Program Objectives (Multifamily and Single Family Rental)

The primary focus of this program is to provide relief for those people impacted with consideration given to affirmatively further fair housing, as called for within the Fair Housing Act and identified in the Analysis of Impediments to Fair Housing, State of Texas, Phase I Hurricane Impacted Communities dated as of January 2011.

The following objectives are provided for the implementation and administration of a successful Rental Program:

- A primary objective of this Program is to provide decent, safe, and sanitary housing in the hurricane impacted areas through the provision of activities designed to mitigate storm damage that occurred as a result of Hurricanes Ike and Dolly, as well as harden against future hurricanes.
- A second objective is to ensure that the housing needs of very low, low and moderate income households are assisted with housing in no less than the proportion to their relative percentages of the overall populations which suffered housing damage within the communities being served.
- A third objective is to prioritize the provision of decent, safe and sanitary housing for elderly and disabled populations with an emphasis on housing choice and design to reduce maintenance and insurance costs as well as provide for the provision of independent living options.



CHAPTER 14

RENTAL HOUSING

14.2 Program Purpose (Multifamily and Single Family Rental)

The Hurricane Ike/Dolly DR Affordable Rental Program has been designed to provide funds for rehabilitation, reconstruction, and/or new construction of affordable multifamily and single family rental housing projects in areas impacted by Hurricane Ike or Dolly.

The purpose of the Affordable Rental Program is to facilitate the rehabilitation, reconstruction, and/or new construction of affordable rental housing needs within the Recipient's service area. Units qualifying for assistance must have sustained damage from Hurricanes Ike or Dolly and a minimum of 51% of the units must be restricted for ten or more years to LMI individuals earning 80% or less of the AMFI at affordable rents. The rents must be equal to or less than rent levels that comply with High Home Investment Partnership ("HOME") rents or project based "fair market rents" as established by HUD and all other existing Land Use Restriction Agreement ("LURA") restrictions as applicable. HOME rent limits are defined by HUD and must equal the lesser of HUD fair market rents or 30% of the adjusted income for people earning 65% of the AMFI and can be found on HUD's website at (<http://www.hud.gov/offices/cpd/affordablehousing/programs/home/limits/rent/>).

14.3 Multifamily Rental Program

14.3.1 Types and Amounts of Assistance

The maximum award cap under the Affordable Multifamily Rental Program is \$10,000,000 per development, but the subrecipients may establish cost caps on a per applicant basis that will limit the amount of total awards that any one applicant may receive. The exact award will depend upon the amount of storm damage, the cost reasonableness of funds bringing the property up to HQS, other funding sources available, and the locally-adopted Regional Methods of Distribution. Eligible costs include hard costs for construction and soft costs associated with repair or construction of rental units plus other costs permissible under 24 CFR 570 Sub Part I.

The CDBG funds may not be used to pay for damages covered by any FEMA reimbursement, SBA assistance, insurance claim, or any insurance policy including delayed or future payments anticipated under insurance policies.

The CDBG Affordable Rental Program funds will be in the form of a 0% performance-based loan and will be forgiven when all contractual obligations have been met, including satisfactory completion of construction and compliance with a ten year affordability period. The terms of the loan/grant may be modified by



CHAPTER 14

RENTAL HOUSING

agreement, if necessary, given other requirements from other financial programs (i.e. tax credit programs, etc.).

A LURA will be placed on developments and any applicable lenders must agree to subordinate to the LURA. The developer/borrower will guarantee completion of construction until a certificate of occupancy has been issued and retainage has been released. There is also a ten year affordability period under the LURA.

Project construction must begin within two months of the closing date of the contract and 50% of construction must be completed within 12 months of the closing date of the contract. Completion of construction and receipt of certificates of occupancy, or certification of completion by an architect for rehabilitation, must occur within 24 months of the date of actual closing.

14.3.2 Property Eligibility

All properties must be located within the jurisdiction of the subrecipient and have sustained damage from Hurricane Ike or Dolly. Hurricane damage must be documented and verified by the submission of a Property Condition Assessment ("PCA") conducted by an independent third party in accordance with the American Society for Testing and Materials (ASTM - <http://www.astm.org/>) "2018 Standard Guidelines for Property Condition Assessments". If the property involves new construction, then a list of the destroyed properties along with the verification of the damage and the inhabitability of the units must be provided.

Any subrecipient that intends to offer an Affordable Multifamily Rental Program must develop a NOFA or application process to fund rehabilitation of existing multifamily housing developments or replacement of damaged units through reconstruction or new construction. Projects evaluated for awards are evaluated according to the priorities established in the NOFA or application. The NOFA or application process must comply with Selection Criteria requirements similar to those identified in Section IV, paragraph A of these guidelines.

Hurricane damaged or destroyed projects awarded assistance will typically be in the 10-30 year old range. The repair/replacement assistance will extend the useful life of the development (at least ten years).

At a minimum, 51% of the total number of units in the development must benefit LMI persons earning 80% or less of Area Median Income as defined by HUD and detailed in the Housing and Community Development Act of 1974 Title I, 105(a). The number of income-restricted units under this program as well as the actual



CHAPTER 14

RENTAL HOUSING

percentage of the restricted units to the total number of units in the development will be listed on the Land Use Restrictive Covenant Agreement.

Rent restricted units occupied by LMI households must be occupied at affordable rents which must be equal to or less than the rent levels established with the High HOME rent limits published by HUD each year. Rent restrictions for the units occupied by LMI households apply through the ten year affordability period and compliance with rent limits is calculated in the same manner as the HOME program.

NOTE: Proposed new construction located within the 100-year flood plain as identified on the most current FEMA Flood Maps is not eligible under this program.

14.3.3 Participant Eligibility Requirements

For-profit entities, public housing authorities, units of local governments, and not-for-profit developers/ borrowers, acting individually or as participants in a limited partnership or limited liability corporation are eligible to participate. Not-for-profit entities must provide evidence of IRS tax-exempt status. Developments are required to list properties on the Public Housing Authority ("PHA") landlord list and provide notification to Housing Assistance Payment ("HAP") providers.

The applicant, development owner, principal or developer/borrower must be in good standing with any outstanding loans and loan commitments. There may be no defaults or negative collection actions on current or previous loans.

No applicant, development owner, principal, development/borrower or general contractor may be "debarred" from the federal and state debarment lists, in accordance with 24 CFR §570.609, as well as other applicable laws.

Applicant, development owner, principal, or developer/borrower must provide a complete listing with addresses of multifamily properties currently owned or managed.

14.3.4 Selection Criteria

As noted earlier, any recipient that intends to offer an Affordable Multifamily Rental Program must develop a NOFA or application process. The application or NOFA process should identify the properties that provide the greatest benefit to the community to those with the greatest need. The Recipient should also develop criteria to award funds to projects that best meet the housing goals and objectives of the program, fair housing as well as the goals and objectives of the community. And all awards should be made to applicants that demonstrate capacity to complete the development planned in the application. The selection criteria should also be



CHAPTER 14

RENTAL HOUSING

consistent with overcoming the impediments identified in the Analysis of Impediments published by the State of Texas for Hurricane Impacted Communities.

Criteria developed by the recipient to identify projects providing the greatest benefit to the community may consider the following:

- Projects are encouraged to increase the number of affordable units by exceeding the requirement to lease 51% of the units to LMI households.
- Projects are encouraged to provide units to households with the highest need for affordable housing by agreeing to create set asides targeting very low, low and moderate income tenants.
- Projects are encouraged to provide broader access to persons with disabilities through single story structures or those served by an elevator.
- Projects are encouraged to meet low maintenance and energy efficiencies by installing energy efficient products and low maintenance items. Combinations of the following items can be used up to a maximum number of points to be determined by the subrecipient:
 - a. Install water-conserving fixtures in all units with the following specifications for toilets and shower heads, and follow requirements for other fixtures wherever and whenever they are replaced: toilets – 1.6 gallons per flush; showerheads – 2.0 gallons per minute; kitchen faucets – 2.0 GPM; bathroom faucets – 2.0 GPM;
 - b. Install Energy Star or equivalent refrigerators in all units;
 - c. Install Energy Star or equivalent lighting fixtures in all interior units and use. Energy Star or high-efficiency commercial grade fixtures in all common areas;
 - d. Use tankless hot water heaters or install conventional hot water heaters in rooms with drains or catch pans piped to the exterior of the dwelling and with non-water sensitive floor coverings (for all units);
 - e. Install Energy Star or equivalent power vented fans or range hoods that exhaust to the exterior (in all units);
 - f. Install Energy Star or equivalent bathroom fans in all units that exhaust to the outdoors which has a humidistat sensor or timer, or operates continuously in all units;
 - g. Install correctly sized HVAC units (according to Manual J) of at least 14 SEER or better in all units; and/or
 - h. Perform an energy analysis of existing building condition, estimate costs of improvements, and make those improvements resulting in a 10 year or shorter payback.



CHAPTER 14

RENTAL HOUSING

A LURA will be placed on each multifamily development receiving disaster funds to repair, construct or reconstruct rental units. The LURA will set forth income and rent restrictions applicable to units of affordable rental housing with respect to the specific affordable rental program and it will include all of the selection criteria items selected by the applicant as part of their application. This document will be filed with the local county clerk's office in the land records. The LURA must be approved by the GLO and it should include language that requires all multifamily projects and/or projects with eight or more single family units under common ownership to not discriminate against tenants providing Section 8 housing choice rental vouchers during the affordability period. The LURA must state the number of units that will be restricted by the program along with the percentage of the restricted units in relation to the total project. The LURA imposes the program requirements on the property for a ten years affordability period.

14.3.5 Program Requirements

Projects awarded disaster recovery funds must satisfy the six eligibility requirements.

1. The project will be reviewed in terms of financial feasibility with the objective to repair existing hurricane damage and bring the property up to standard to extend the useful life or replace the severely damaged units. Financials, proformas, and loan information, as well as the sources and uses of funds must be submitted identifying the proposed financing sources and expenses of the project.
2. Upon allocation for funding, the property will go through environmental review which would be reimbursable from grant/loan funds.
3. For rehabilitation or construction activities, the Developer/Borrower must submit an acceptable Property Condition Assessment ("PCA") conducted by a qualified third party indicating the condition of the property as well as damage caused by the particular storm. In addition to repair costs identified in the PCA, other costs will be considered if they extend the useful life of the project. The project costs must be reasonable and typical in the current marketplace for projects of similar scope. Plans and specifications must be submitted for replacement units.
4. The project must comply with all applicable federal and state requirements.
5. The project must address identified impediments to fair housing choice.
6. The project must serve the local population impacted by the hurricanes.



CHAPTER 14

RENTAL HOUSING

14.3.6 Underwriting

The proposed multifamily projects will go through an underwriting process established by the recipient which may review among other items, the ownership structure, property operations, the sources and uses of funds, and the financial statements of the owner and guarantor (if applicable). The underlying debt and operating expenses of the property should be reviewed to determine if the project is feasible during the affordability period and demonstrates income adequate to cover operating expenses and applicable debt service.

Sources and uses should be reviewed to determine the adequacy of the funding to complete the project in conjunction with the PCA. The scope of work including the repair of any hurricane damage will be assessed.

Following underwriting, a contract will be executed between the developer and the recipient. This contract will specify the terms under which the funding is provided to the project; the number of units to be renovated/developed; the affordability period; and other conditions of the agreement.

14.3.7 Environmental Review

Each development assisted with CDBG DR funds must be environmentally cleared in accordance with the regulations established in 24 CFR Parts 50 & 58. No commitment or disbursement of funds will occur prior to the completion of this review.

Rental Program funds cannot be used to assist rental units (multi and single family) that have been determined to be in the Coastal Barrier Resource Zones or airport runway clear zones. Once the Environmental Review is complete the review is forwarded to GLO for environmental clearance.

The developer/borrower must comply with all applicable laws with respect to lead based paint in conjunction with Section 302 of the Lead Based Paint Poisoning Prevent Action [42 USC Section 4831(b)], as well as the presence of asbestos containing materials within the project.

A PCA must be conducted for rehabilitation. The PCA must conform to American Society for Testing and Materials (ASTM - <http://www.astm.org/>) "2018 Standard Guidelines for Property Condition Assessments."



CHAPTER 14

RENTAL HOUSING

14.3.8 Construction

Housing that is constructed or rehabilitated with CDBG funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. When CDBG funds are used for the rehabilitation of an existing project, the entire unit must be brought up to HQS. All newly constructed and reconstructed housing units must meet the current edition of the Model Energy Code (<http://www.energycodes.gov/implement/pdfs/modelcode.pdf>) published by the Council of American Building Officials. The GLO will conduct a final inspection of the development to insure compliance with all codes, standards and ordinances. All common areas and units will be subject to this Uniform Physical Conditions Standards ("UPCS") inspection. Any deficiencies identified in that inspection must be corrected before final retainage is released.

Housing developments must meet all accessibility requirements in accordance with 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794). Multifamily housing developments must meet the design and construction requirements at the Texas Administrative Code, Title 10, Chapter 60, Subchapter (B) 10 TAC § 60.201-211. Covered multifamily dwellings and common use facilities, as defined in 24 CFR §100.201, must meet the design and construction requirements at 24 CFR §100.205, which implement the Fair Housing Act (42 U.S.C.3601-4619).

The Recipient must ensure that compliance with Federal Labor Standards; Section 3 – Economic Opportunity Plan; MBE program; SBE requirements; Affirmative Marketing; and Contractor Clearance is achieved by each development.

The project costs must be "reasonable and customary" as determined by an acceptable independent third party architect or engineers report or the costs would be considered reasonable as documented by a bidding process. All contracts will be payment and performance bonded. All projects are subject to The Davis-Bacon Wage Act (40 USC 276a-276-a5, 24 CFR Part 70), The Contract Work Hours and Safety Standards Act (40 USC 327 et seq), The Copeland "Anti-Kickback" Act (18 USC Sec 874), Section 3 (24 CFR Part 135) requirements, reporting and goals, and should budget accordingly.

Prior to commencement of construction, the developer/borrower must have a notice to proceed issued by the recipient. Scattered site projects owned by a sole owner with eight or more units must also comply with the Davis-Bacon Wage Act (40 USC 276a-276-a5, 24 CFR Part 70).



CHAPTER 14

RENTAL HOUSING

Prior to the funding of each draw, each request will include the American Institute of Architects ("AIA") forms 702 and 703 submitted by an independent third party architect verifying actual costs. 10% of each draw will be held as retainage until satisfactory completion of the project.

14.3.9 Compliance Requirements

Labor Standards

All applicable developments must comply with applicable labor standards, including, but not limited to Davis-Bacon wages, Section 3, MBE, and SBE. Under the federal Davis-Bacon Wage Act (40 USC 276a-276-a5, 24 CFR Part 70, 24 CFR §570.603), prevailing wages must be paid on all construction and related work on projects that have eight or more units.

The following information will be provided on all projects to the recipient or the GLO Labor Standards Specialist:

- Notes of bid and preconstruction conferences as well as attendance rosters with attendees signatures.
- Notice to Proceed.
- All DOL General Wage Determination reports showing prevailing wages applicable to each project throughout the construction phase.
- Final Wage Compliance Report
- Davis-Bacon communications, including:
 - DOL communications;
 - Letters to contractor(s) requesting payments of restitution owed to workers and liquidated damages, including copies of letters confirming contractor(s) compliance and/or resolution of labor-related issues. DOL Semi-Annual Report with all required reporting data associated with the CDBG-DR Hurricane Ike award; and
 - Additional documentation as required by the Recipient or the GLO.

Relocation

If applicable, the subrecipient is responsible for the relocation activities related to the project. The developer/borrower shall comply with program regulations at 24 CFR §570.606, the URA, as amended, at 49 CFR §24, and §104(d) of the Housing and Community Development Act of 1974, as amended, at 24 CFR §42.



CHAPTER 14

RENTAL HOUSING

If applicable, the developer/borrower shall submit to the recipient copies of all documentation relating to URA, including but not limited to, a Relocation Plan with Assurance Letter, Notice to Real Property, Tenant Status Reports, and all Notices with Tenant Acknowledgments as required by the URA.

Project Completion and Release of Retainage Procedures

When a project is completed, the procedures listed below will be followed to document completion and allow for the retainage (the last 10% of project costs) to be paid. The list of items to be submitted includes:

- Final Draw for Retainage. This will be identical to other draw submissions and it will include the final inspection report from the third party inspector indicating that the project is complete.
- Final Wage Compliance Report.
- The Certificate of Occupancy for the project (if applicable).
- A letter of certification from an independent third party Architect that the project meets the requirements of the ADA.
- The AIA Certificate of Substantial Completion signed by the Owner, General Contractor, and Architect.
- Lien Release from General Contractor to show that all subcontractors have been paid or a down date endorsement from the title company showing no liens have been filed against the property.

Project Lease Up Procedures

Multifamily developments assisted with CDBG funds are required to have a project Tenant Selection Policy ("TSP"), Affirmative Marketing Plan, and schedule of leases & rents to ensure compliance with CDBG requirements. The TSP must be:

- Written and displayed at the leasing office of the development.
- Consistent with the purpose of providing housing for families making 80% or less of AMFI.
- Reasonably related to program eligibility and Lessee's ability to perform under the lease.
- Chronological, so that tenants taken from a written waiting list are assisted in order.
- Designed to give prompt written notice of the grounds for rejection to any Lessee rejected based on ineligibility.



CHAPTER 14

RENTAL HOUSING

Annual Monitoring Procedures

Completed projects require annual monitoring. Monitoring will be conducted by the Recipient throughout the affordability period. The results and reviews of monitoring activities ensure the provision of safe, decent, affordable rental housing in compliance with all applicable regulations. Income targets and rents must comply with the Affordable Rental Program, LURA requirements, and other compliance requirements.

Monitoring includes:

1. On-site inspection of rehabilitated properties to ensure compliance with HQS under 24 CFR Sec. 982-401.
2. CSR to ensure compliance with the CDBG regulations and the NOFA, but not limited to, the following:
 - a. Affordable Rental Housing;
 - b. Subsequent Rents during the Affordability Period;
 - c. Initial and Annual Recertification of Tenant Income;
 - d. Periods of Affordability;
 - e. Tenant and Participant Protection (lease term, prohibited lease terms, tenant selection policy);
 - f. Civil Rights Act of 1964 and amendments;
 - g. Section 504 of the Rehabilitation Act of 1973;
 - h. Architectural Barriers Act and the ADA;
 - i. Design and Construction requirements;
 - j. For rehab projects, entire structure must meet HQS;
 - k. Benefit all income targets including the CDBG LMI requirement to least 51% of the units to LMI households;
 - l. Affirmative Marketing;
 - m. National Flood Insurance Program;
 - n. Displacement, relocation, acquisition, and replacement;
 - o. Lead-Based Paint Compliance;
 - p. Fair Housing and Equal Opportunity;
 - q. Section 3 (24 CFR Part 135) goals and reporting requirements; and
 - r. Applicant data reporting as required by the Conciliation Requirement.



CHAPTER 14

RENTAL HOUSING

3. Notification in writing of the results of the monitoring activity will be provided to the borrower, with a stated corrective action plan and a time frame for completing the corrective actions, if one is needed.

Files and Reports

The recipient will maintain the files that verify a tenants eligibility for each income restricted unit for a period of ten years as required by the GLO. Such files will be open for inspection to the GLO or any of its duly authorized representatives, or funding source representatives.

Changes, Waivers, and/or Conflicts

The recipient has the right to change, modify, waive, or revoke all or any part of these guidelines, with the prior written approval of the GLO.

14.4 Single Family Rental Program

A single family rental program's goal is to restore existing neighborhoods and to increase the affordable rental stock in a community affected by Hurricanes Ike or Dolly. Applicants receiving CDBG DR funds to rehabilitate or reconstruct damaged properties agree to lease the rental units to LMI households (80% of Area Median Income or less) at restricted rents. Rents must comply with the High HOME rent limits.

The CDBG funds are provided in the form of a 0% forgivable loan/grant.

14.4.1 Types and Amount of Assistance

The recipient will develop a process to accept applications for funding to serve low, very low, extremely low and moderate-income households. Funding priorities will be developed in a manner that affirmatively furthers fair housing objectives.

The maximum award cap under the Single Family Rental Program is based on the number of bedrooms in the rental unit. The exact award will depend upon the amount of storm damage, the cost of rehabilitation or reconstruction up to maximum award amount. When a rental unit is assisted with disaster recovery funds, the entire unit must be brought up to HQS. Eligible costs include hard costs for construction and soft costs associated with repair or construction of rental units plus other costs permissible under 24 CFR 570.



CHAPTER 14

RENTAL HOUSING

Table A: Maximum Awards

	One Bedroom	Two Bedrooms	Three Bedrooms
Max award	\$50,000	\$60,000	\$70,000

14.4.2 Property Eligibility

All properties must be located within the jurisdiction of the Recipient and must have sustained damage from Hurricane Ike or Dolly. Hurricane damage must be documented and verified by the submission of a PCA conducted by an independent third party in accordance with the ASTM (<http://www.astm.org/>) "2018 Standard Guidelines for Property Condition Assessments". Properties may be rehabilitated, reconstructed or newly constructed on their existing site or another site if the current site is deemed unsafe for habitation.

Single family, detached dwellings are eligible for assistance and must contain between one and three bedrooms at a minimum; priority is given properties with three or more bedrooms. Condominiums, townhomes, duplexes, triplexes or four-plexes are not eligible.

Any recipient that intends to offer an Affordable Single Family Rental Program must develop an application process to fund rehabilitation of existing single family housing developments or replacement of damaged units through reconstruction or new construction. Projects evaluated for awards are evaluated according to the priorities established in the application.

Upon completion, the single family homes must meet HQS and benefit LMI persons earning 80% or less of Area Median Income as defined by HUD and detailed in the Housing and Community Development Act of 1974 Title I, 105(a).

The rent for the unit occupied by the LMI household must be occupied at affordable rents. The units occupied by LMI households must be equal to or less with the High HOME rent limits published by GLO through the affordability period. Compliance with rent limits is calculated in the same manner as the HOME program.

Housing units located where federal assistance is not permitted by the Coastal Barriers Resource Act or within runway clear zones of either a civil or military airport are not eligible.

Each property must currently have access to water, electricity, and sewer or septic service, or hookups to provide those services.



CHAPTER 14

RENTAL HOUSING

The on-going maintenance of hazard and flood insurance is a program requirement where applicable.

14.4.3 Participant Eligibility Requirements

Individual owners with fee simple title to the property are eligible to participate. The owner must be in good standing with any loans on the property or in default or negative collection actions on any current or previous loans. The property taxes must be current on the property.

The owner of the property may not be “debarred” from the federal and state debarment lists, in accordance with 24 CFR §570.609, as well as other applicable laws. The owner must provide a complete listing with addresses of other rental properties currently owned or managed.

All applicants must not owe any child support payment(s) under any court order. If an applicant is not current on child support payments, that member will be required to enter into a payment plan and must supply a copy of the payment plan signed by all applicable parties, along with documentation that they are current on their payment plan.

14.4.4 Selection Criteria

Any recipient that intends to offer a Single Family Rental Program must develop an application process. The application process should identify the properties that provide the greatest benefit to the community with the greatest need. Applications will be developed with criteria to allow the recipient to determine which projects meet the housing goals and objectives of the community as well as affirmatively furthering fair housing objectives.

Criteria should be developed by the Recipient to identify projects providing the greatest benefit to:

- Expanding affordable housing stock. A priority could be given to vacant units in a condition that is not suitable for occupancy.
- Encouraging a vested interest in the project. A priority could be given to projects where the landlord contributes at least 25% of the funds necessary to repair the property.
- Encouraging housing for families. A priority could be given to projects with three bedrooms or more.
- Encouraging applicants to rehab or build new properties that are located near public transportation, shopping and schools. A priority could be given to



CHAPTER 14

RENTAL HOUSING

properties located within a two mile radius of public transportation, shopping or schools.

- Compliance with the Texas Government Code, Section 2306.154.

14.4.5 Program Requirements

To receive housing assistance funds the property must satisfy four levels of eligibility.

1. The property must meet eligibility requirements listed under Section II of the Single Family Rental Program. The property must require repair, rehabilitation or reconstruction and the owner must provide documentation or third party inspections to support storm damage.
2. The property must pass a federally required environmental review.
3. If the property includes rehabilitation or new construction activities a PCA must be conducted by a third party. The work write up must be completed in sufficient detail to obtain bids or cost estimates. Rehabilitation of the residence must bring the property into compliance with local health, safety and building codes and pass a HQS inspection. The project costs must be reasonable and typical in the current marketplace for projects of similar scope. Plans and specifications must be submitted for replacement units.
4. The project must comply with all applicable federal and state requirements.

14.4.6 Underwriting

The recipient will determine the type of feasibility or underwriting process required for Single Family projects but at a minimum a review of the cost required to construct or rehabilitate the property along with a review of the income and expenses of the property should be undertaken.

14.4.7 Environmental Review

The environmental review is a separate and distinct review from any other review. Other previously performed (or applicant-provided) environmental reviews will not satisfy the requirements. Be aware that applicants are prohibited from beginning repairs, rehabilitation or reconstruction until they receive their loan and/or grant and the environmental review has been completed.

14.4.8 Construction

For rehabilitation the properties must comply with local building codes, and the entire structure must comply with local health and safety codes and standards, and HQS.



CHAPTER 14

RENTAL HOUSING

For reconstruction including newly constructed homes, the entire structure must be in compliance with building codes and zoning ordinances and applicable construction or livability standards after assistance including:

- Energy standards as verified by a RESCHECK[™] certification. The certification must be available in the file prior to purchase.
- The IRC as 11 of the IRC as required by Chapter 388 of the Health and Safety Code as applicable.

The project costs must be “reasonable and customary” as determined by an acceptable, independent third party report or considered reasonable as documented by a bidding process.

Under the Rehabilitation Program, any housing unit built before 1978 must be inspected for hazards associated with the presence of lead-based paint or may be presumed to have lead-based paint hazards. Proof of notifications, work completed and clearance examination must be available. Also under the Rehabilitation Program, any housing unit must be in compliance with Section 31 of the Federal Fire Prevention Control Act of 1974 which requires that any housing unit rehabilitated with Department funds be protected by a hard-wired or battery-operated smoke detector.

Reconstructed or new construction must comply with Texas Government Code 2306.514.

10% of each draw will be held as retainage until satisfactory completion of the project.

14.4.9 Compliance Requirements

In exchange for the loan award, each applicant agrees to comply with all LURA terms and requirements as a rental landlord.

14.4.10 Land Use Restriction

A LURA will be placed on each single family property receiving disaster funds to repair, construct or reconstruct rental units. The LURA must be approved by the GLO. The LURA must contain a ten year affordability period beginning after closeout of loan or grant and on properties where the owner owns 20 or more single family properties, language must be included that does not discriminate against potential tenants with Section 8 housing choice rental vouchers.



CHAPTER 14

RENTAL HOUSING

Applicants will be required to sign a LURA, which sets forth income and rent restrictions applicable to units of affordable rental housing and constituting, with respect to the specific affordable rental housing. This document will be filed with the local county clerk's office in the land records. The LURA imposes the requirements on the property for the full loan period of ten years.

The LURA is an officially-filed restriction that ensures the property will remain rent restricted for the full loan period. At the end of the loan period, the restriction will automatically terminate and will no longer be valid or enforceable. Since the LURA is "self executing", nothing will need to be filed at the local county clerk's office to show that the loan period has ended. If the applicant abides by the terms and conditions of the LURA for the full ten year compliance period, the loan will be forgiven and no interest will be charged provided the landlord complies with the LURA requirements.

The LURA must state the number of units that will be restricted by the program along with the percentage of the restricted units in relation to the total project and the LURA will expire on the tenth anniversary of the later of the issuance of the Certificate of Occupancy or the loan closing.

14.4.11 Forgivable Loan Default

Disaster assistance is provided as an unsecured note to landlords receiving rehabilitation or reconstruction assistance. Violation of any terms of the LURA will result in a Statement of Noncompliance being issued to the applicant. The notice will state clearly the reasons for noncompliance and will allow the applicant time to correct the non-compliance.

If the applicant is in default, the amount of loan principal then outstanding (based upon the amount previously forgiven during the ten year period) shall immediately become due and payable. Upon default the forgivable loan will immediately convert to an interest-bearing demand note and becomes immediately due and payable. The due and payable amount will be based upon the unforgiven amount of the loan.

Default occurs at the property level. If the unit is found to be non-compliant with the LURA, then the entire property will be considered in default. Interest on defaulted loan awards will be set at the London Interbank Offered Rate plus 1%. Interest will be calculated beginning on the date that the first check is issued.



CHAPTER 14

RENTAL HOUSING

14.4.12 Relocation

The developer/borrower is responsible for the relocation activities related to the project. The developer/borrower shall comply with program regulations at 24 CFR §570.606, the URA, as amended, at 49 CFR §24, and §104(d) of the Housing and Community Development Act of 1974, as amended, at 24 CFR §42.

If applicable, the developer/borrower shall submit to the recipient copies of all documentation relating to URA, including but not limited to, a Relocation Plan with Assurance Letter, Notice to Real Property, Tenant Status Reports, and all Notices with Tenant Acknowledgments as required by the URA.

14.4.13 Landlord Requirements

If a landlord/management company is utilized to manage the property, then the following requirements must be followed. These requirements include:

- Leasing all units to tenants that have eligible household incomes (80% AMI or below);
- Charging rents that are at or below High HOME rents;
- Following income certification and verification procedures and keeping records on all tenants' income;
- Maintaining complete and accurate rent rolls; and
- Renting units in accordance with HUD Fair Housing Standards as well as standards set in the Analysis of Impediments to Fair Housing as prepared by the State of Texas.

The applicant is responsible for maintaining complete and accurate records for the full period of the loan term. These records must fully and completely support the satisfactory completion of all compliance items. These records must be provided to the recipient or to the GLO upon request.

Compliance with these terms for the full period of the loan will result in loan forgiveness, leaving the applicant with no obligation to repay the loan or interest on it. Failure to comply with terms will lead to non-compliance.